HANGING WITH ELECTION NIGHT LOSERS • BILL CLINTON'S FINAL LEGACY

REASON

Free Minds and Free Markets®

January 2001

DR. STRANGELUNCH

Or: Why we should learn to stop worrying and love genetically modified food

BY RONALD BAILEY

LEGALIZE POT!

Q&A WITH NEW MEXICO GOV. GARY JOHNSON

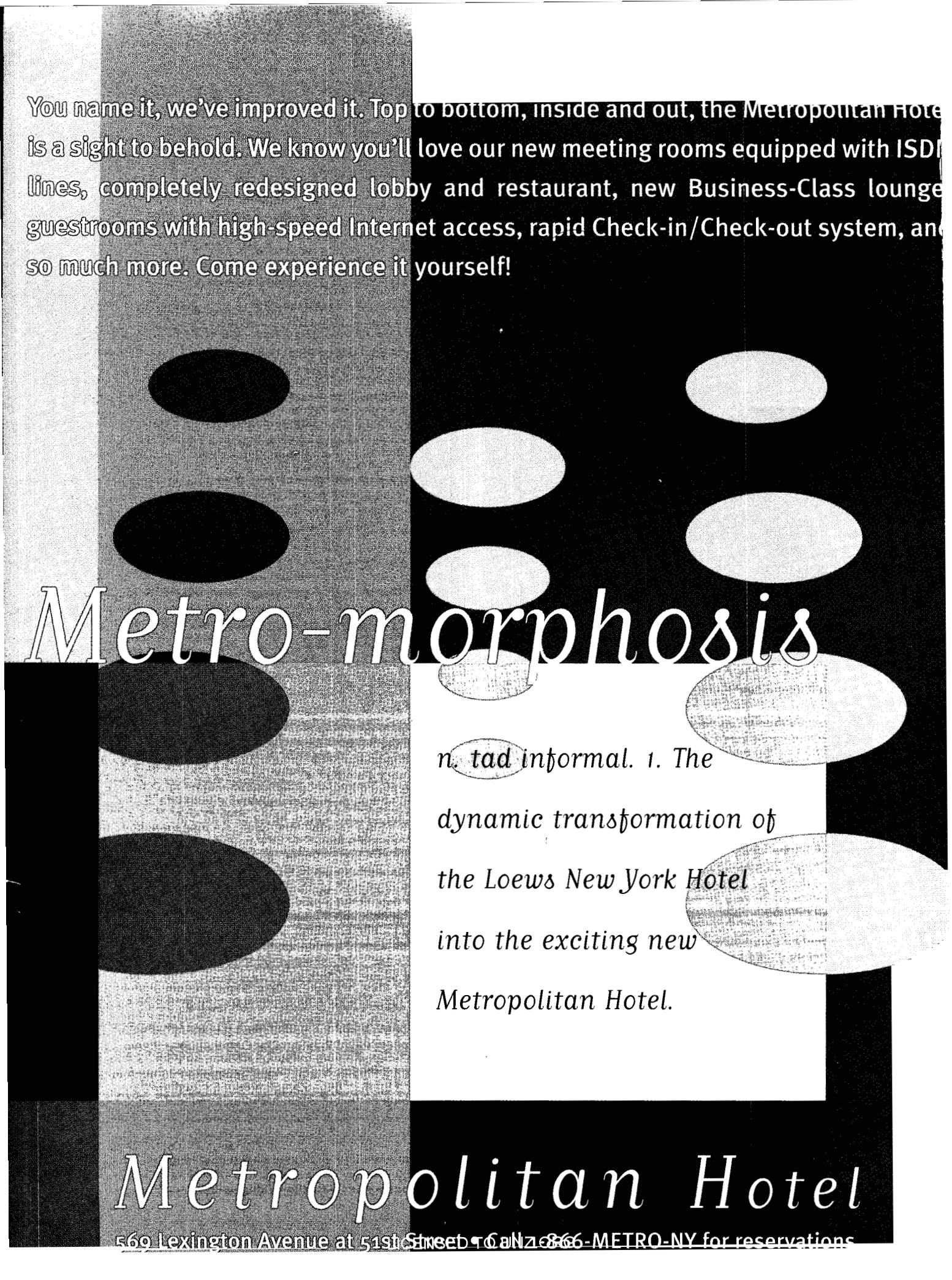
LAS VEGAS VS. FINE ART

TARGET VS. NY TIMES

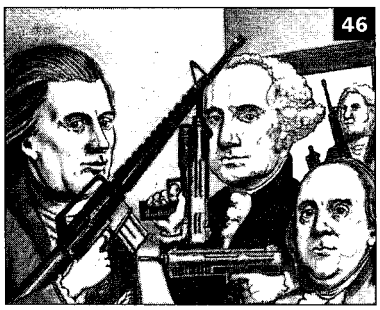
WAS EARLY AMERICA A GUN-FREE ZONE?

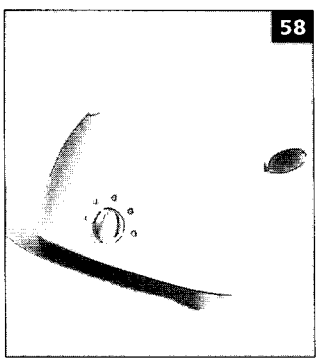
LARRY McMURTRY'S INTERSTATE LOVE AFFAIR

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED


You name it, we've improved it. Top to bottom, inside and out, the Metropolitan Hote
is a sight to behold. We know you'll love our new meeting rooms equipped with ISDI
lines, completely redesigned lobby and restaurant, new Business-Class lounge
guestrooms with high-speed Internet access, rapid Check-in/Check-out system, an
so much more. Come experience it yourself!
Metro-morphosis
n. tad informal. 1. The
dynamic transformation of
the Loews New York Hotel
into the exciting new
Metropolitan Hotel.
Metropolitan Hotel
569 Lexington Avenue at 51st Street • Call 1-866-METRO-NY for reservations
Printed on recycled paper

REASON®
Free Minds and Free Markets®
January 2001/Vol. 32 No. 8





Articles

20 Dr. Strangelunch by Ronald Bailey
Or: Why we should learn to stop worrying and love genetically modified food.

30 America's Most Dangerous Politician: An Interview With Gary Johnson by Michael W. Lynch
The governor of New Mexico on taxes, school vouchers, and drug policy.

37 God Talk by Cathy Young
The First Amendment vs. freedom of speech.

41 Shaky Ground by Gene Callahan
Why flexible rules and reasonable regulators are a builder's worst nightmare.

Editorial

4 Presidential Blowup by Nick Gillespie
In an election more obscure than an Antonioni film, Bill Clinton's real legacy comes into focus.

Columnist

18 Capital Letters: All Losers' Night by Michael W. Lynch
In which our man in Washington desperately cruises for losers on election night and learns from experts how the new president should—must!—govern.

Culture & Reviews

46 Concealed Weapons by Joyce Malcolm
A controversial book has the facts all wrong.
Arming America: The Origins of a National Gun Culture, by Michael A. Bellesiles

49 The Last Picture Postcard by Lynn Scarlett
Roads: Traveling America's Great Highways, by Larry McMurtry

50 Bigger and Badder by Brian Doherty
More books are more available than ever before. So who's complaining?

53 From Russia With Malice by Sean McMeekin
the eXile: Sex, Drugs, and Libel in the New Russia, by Mark Ames and Matt Taibbi

54 Muerte a Las Vegas by Charles Paul Freund
Will fine art kill Sin City?

Departments

8 Letters
The rights of great apes, debating animal experimentation...

12 Citings
Artists vs. the state, Mormons vs. DARE, Indianapolis vs. video games...

58 Artifact: Downmarket Deluxe
Why Target is more stylish than The New York Times.

Cover illustration: Kerry P. Talbott

REASON (ISSN 0048-6906) is published monthly except combined August/September issue by the Reason Foundation, a nonprofit, tax-exempt organization, 3415 S. Sepulveda Blvd., Suite 400, Los Angeles, CA 90034-6064. Periodicals postage paid at Los Angeles, CA, and additional mailing offices. Copyright© 2000 by Reason Foundation. All rights reserved. Reproduction or use, without permission, of editorial or graphic content is prohibited. Reason and Free Minds and Free Markets are registered trademarks owned by the Reason Foundation. **SUBSCRIPTIONS:** $19.98 per year. Outside U.S. add $10/year surface, $55/year airmail. Address subscription correspondence to Reason, P.O. Box 526, Mt. Morris, IL 61054, 815-734-1102. For address change (allow six weeks), provide old address and new address, including zip code. **UNSOLICITED MANUSCRIPTS** returned only if accompanied by SASE. **INDEXED** in Readers' Guide to Periodical Literature, InfoTrac, Historical Abstracts, Political Science Abstracts, America: History and Life, Book Review Index, and P.A.I.S. Bulletin. Available on microfilm from University Microfilms International, 300 North Zeeb Rd., Dept. P.R., Ann Arbor, MI 48106. **Printed in the United States. POSTMASTER:** Send address changes to Reason, P.O. Box 526, Mt. Morris, IL 61054. Publications Mail Sales Agreement No. 1476696.

Presidential Blowup

In an election more obscure than an Antonioni film, Bill Clinton's real legacy comes into focus.

By Nick Gillespie

As we go to press, the *finale ultimo* of the presidential race has yet to be staged. There's every indication it will be a Busby Berkeley–type production number, possibly featuring the U.S. Supreme Court, heated accusations of voter fraud ("irregularities," in the new parlance) and civil rights violations, and enough vitriol and acrimony to irradiate the White House at least through the 2004 presidential campaign. Florida's contested ballots have yet to be counted definitively, New Mexico has recently flip-flopped from one candidate to another, and possible challenges loom in Iowa, Wisconsin, and Oregon, states where Al Gore's leads number only in the small thousands.

A million absentee ballots in California have yet to be tallied, threatening the vice president's lead of roughly 210,000 in the national popular vote. As Sunshine State citizens stage rallies noisy enough to disrupt vote recounts, pundits are spinning out ever more lurid and ludicrous scenarios, including ones in which Joe Leiberman becomes George W. Bush's vice president and Speaker of the House Dennis Hastert (R-Ill.) gets sworn in as president of the U.S. in January.

With each passing hour, the election seems less and less an exercise in democracy and more and more like a wild script directed by Michelangelo Antonioni. Antonioni's famous 1966 film *Blowup* follows the adventures of a fashion photographer in Swinging London who, while taking random pictures in a park, may or may not have photographed a murder. During the course of the film, the photographer enlarges his pictures in the hope of clarifying the details but finds instead that everything just gets murkier. Antonioni's film invites audiences to study ambiguous photographic images until they became random collections of dots on a page, devoid of any definitive meaning.

So it is with Campaign 2000, which confronts us with an uncomfortable but unavoidable truth: Ideological spinmeisters aside, there is no absolutely good vote count available in this election. Given the number of votes cast nationwide and the slim margins separating Gore and Bush, either candidate could plausibly be declared the winner of the popular vote or the electoral vote.

The presidential race was a dead heat that forced us to admit that reality is ambiguous and that politics always plays a role in its definition. Which is to say that the race was a fitting tribute to Bill Clinton.

What's more, because neither candidate will end up with even 50 percent of the popular vote, whoever is declared the winner will disappoint more than half of all voters (not to mention the whopping 49 percent of eligible voters who didn't bother to cast a ballot this time around).

Both the Bush and Gore teams have implored the other to be "statesmanlike" and to concede the election rather than put the nation through the unseemly spectacle of two men who desperately want to be president duking it out to the bitter end. Needless to say, the argument that the other should just quit for the good of the country cuts both ways.

Out of circumstance and necessity, hard math has been replaced with what George W. Bush would no doubt call its fuzzy cousin. This is particularly true in Florida, where election officials in select counties have ordered "manual recounts" and are poring over paper ballots for a third tally, this one by hand, trying to "divine" the intentions of voters from incorrectly or imperfectly completed ballots.

Are those all-important and damnable "chads," the perforated squares on punch-card ballots that voters are supposed to knock out with a metal stylus, "hanging," "pregnant," or merely "dimpled"? What, if anything, do those different conditions indicate vis-à-vis voter intent? Apart from fears of conscious post-vote tampering, could the ballots be affected simply by repeated handling?

Particularly in overwhelmingly Democratic Palm Beach County, where the number of disputed ballots has ranged as high as 30,000, the manual recounts are plainly an exercise in political projection: The ballots are essentially Rorschach blots, and no one doubts that the Gore supporters in charge of the process will "see" enough new votes to help their candidate declare victory.

Yet such obvious and ideologically charged shenanigans only come into serious play in elections that are close to begin with, and Florida's is certainly that, with the race separated by a few hundred votes out of more than 6 million cast. The dramatic difference between the original machine count and the automated recount—Bush lost close to 1,400 votes—underscores the lack of certitude in such matters. Bush representative James Baker may be right that the machines are "non-partisan," but that doesn't mean

they are accurate.

This presidential race, then, is not so much a *political* crisis as an *epistemological* one. It is a dead heat that forces us to admit that reality is, in the end, ambiguous and that politics always plays a role in its definition.

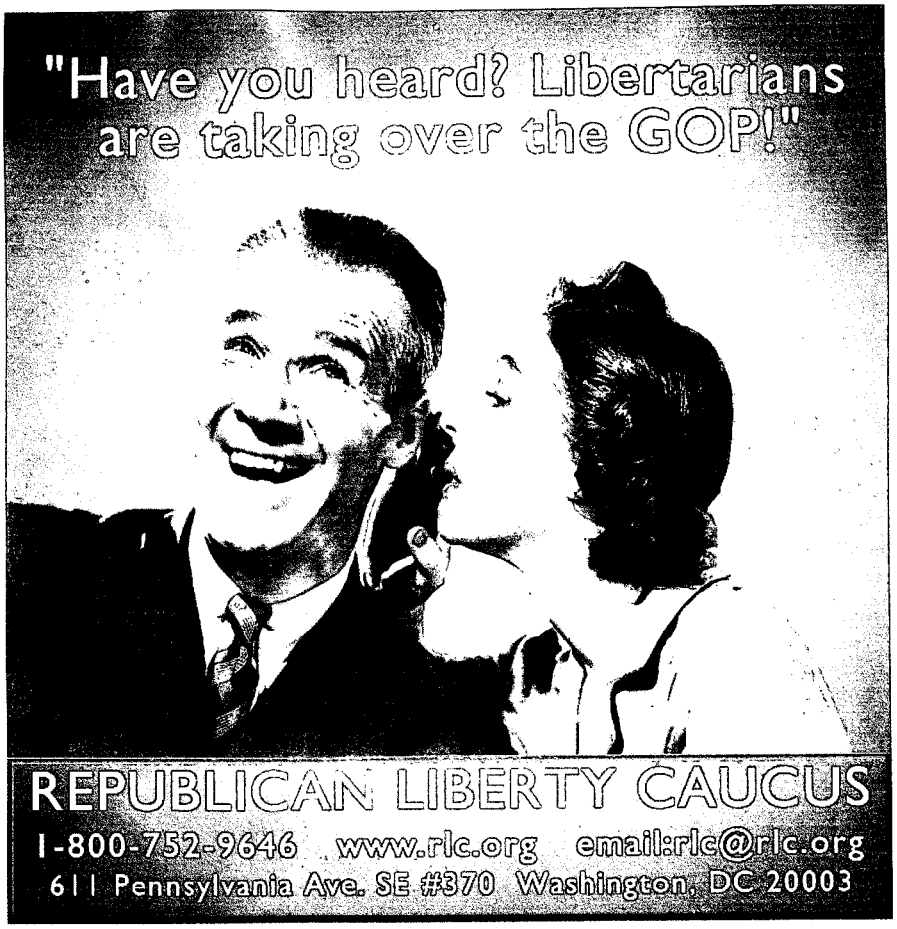
Which is to say that, whoever ends up in the White House next year, the presidential election has been a fitting final tribute to Bill Clinton.

Consistently throughout his two terms, the guarantor of the "most ethical administration" in U.S. history has asked, or perhaps insisted, that we puzzle over seemingly clear words such as *is* and *sex* until everything solid dissolves into air—until reality, common sense, and anything like plain facts are totally up for grabs and subject to ubiquitous "spin" and an all-out "permanent campaign."

As the man from Hope finally exits 1600 Pennsylvania Avenue in January (we can be reasonably sure—though perhaps not as certain as we'd like to be—that this will indeed happen), his true legacy may be that he has supercharged the nation with a thoroughgoing skepticism toward elected officials and politics in general.

While it is an old joke that politicians are liars and scoundrels, Clinton set a new standard for open and ultimately acceptable mendacity with his finger-waving disavowals (he didn't have sexual relations with *that* woman), grotesque distortions (the Branch Davidians who died at Waco were simply "some religious fanatics [who] murdered themselves"), and self-serving historical assessments (the House Republicans should "apologize" to the country for impeaching him—his survival of which, incidentally, he says was one of the great triumphs of his presidency).

It is something of a national parlor game to debate the exact moment when the United States "lost its innocence" as a nation, when we had to finally grant that perhaps we were not immune from the fallen state we ascribe to every other country on Earth. Most people shy away from our obviously darker historical episodes, such as the incorporation of the three-fifths clause in the Constitution or Andrew Jackson's forced resettlements of Native Americans, in favor of relatively light moments, such as the game show


"Have you heard? Libertarians are taking over the GOP!"
REPUBLICAN LIBERTY CAUCUS
1-800-752-9646 www.rlc.org email:rlc@rlc.org
611 Pennsylvania Ave. SE #370 Washington, DC 20003

Need Bear Market Protection?

The PRUDENT BEAR FUND can help hedge your portfolio in *down* markets:

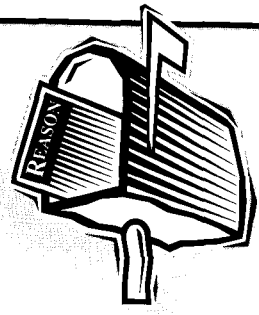
	3/10/00-10/12/00	7/16/99-10/15/99	7/17/98-10/8/98	1/22/97-4/2/97
Prudent Bear (No load)	**24.3%**	**28.1%**	**68.3%**	**10.9%**
Dow Jones	2.0%	-10.3%	-16.8%	-4.4%
NASDAQ Composite	-39.0%	-4.6%	-29.3%	-13.4%

For a prospectus and more information on Prudent Bear funds call

1-888-PRU-BEAR (778-2327)

The Prudent Bear Fund (no load shares) total return for the 12 months ending September 30, 2000 was -9.6%, and its average annual return since inception (Dec. 29, 1995) through September 30, 2000 was -15.7%. Performance data quoted represents past performance, which is no guarantee of future results. You should realize that investment return and principal value will fluctuate so that shares, when redeemed, may be worth more or less than their original cost. The prospectus contains more complete information, including fees and expenses. The prospectus should be read carefully *before* you invest or send money.

www.prudentbear.com



Dear Subscribers,

We hope your magazine arrives safe and sound each month. But if it doesn't—or if you have any other subscription problems—please accept our apologies and keep in mind these helpful hints:

■ Expiration Date

You will find your subscription expiration date printed above your name on the mailing label.

■ Change of Address

Please give us eight weeks' notice. Send both your old address (simply send us your current mailing label) and your new address to: Reason, P.O. Box 526, Mt. Morris, IL 61054.

■ Duplicate Copies

If you receive two copies of the same issue, check both mailing labels carefully—the slightest difference can cause problems. Then send us both labels, indicating which is correct, and we'll rectify the matter. (You may continue to receive a "complimentary" copy for a month or two.)

■ Billing Problems

The fastest way to solve a billing problem of any kind (billing error, duplicate invoice, et cetera) is to send us a letter explaining the error, plus any related invoice(s), and your mailing label. We will take corrective steps immediately.

REASON
P.O. Box 526
Mt. Morris, IL 61054
1-888-REASON-8
Subscribe@reason.com

STANTIS ©2000 THE BIRMINGHAM NEWS COPLEY NEWS SERVICE
I DID NOT HAVE SEXUAL RELATIONS WITH THAT WOMAN
THAT DEPENDS ON WHAT 'IS' IS
MY TESTIMONY WAS NOT FALSE AS I DEFINE THE TERM
THE LEGACY BUILDING CONTINUES...

scandals of the 1950s.

The Clinton years have provided a fresh supply of material to kick around in this discussion, including the suspiciously timed and never justified bombing of a Sudanese pharmaceutical factory on the eve of Monica Lewinsky's grand jury testimony, the launching of an air strike on Iraq just before the House's impeachment vote, and the spectacle of feminists such as Gloria Steinem, who, after helping to run the lecherous lush Sen. Bob Packwood (R-Ore.) from office, articulated a "one-free-grope policy" to excuse alleged sexual improprieties by the president.

Through his routinely Jesuitical pronouncements and actions, Clinton has managed to lower the bar on cynicism regarding those wielding power. In a post-Nixon age, that is no small achievement and must rank right up there with Clinton's three truly singular accomplishments: signing a major welfare reform bill that has helped put poor Americans on the road to self-sufficiency, overseeing an ostensible balancing of the federal budget, and delivering both houses of Congress to the Republicans for the first time since the Eisenhower era. We might add as well one potential achievement: By failing to ever win a majority of the popular vote and by so dramatically overreaching legislatively in his first term that he became a minority president, he has arguably sped along the death of the imperial presidency.

To be sure, the outgoing president is not solely responsible for the generally heightened levels of scrutiny and cynicism directed at politicians. Pathological Clinton haters aside, he had more than a little help from outspoken, sanctimonious, and hypocritical Republican critics such as family-man-cum-phone-sex-addict Rep. Bob Livingston (La.), anti-abortion adulterer Rep. Henry Hyde (Ill.), and Rep. Dan Burton (Ind.), who memorably called the president a "scumbag"—an epithet that would seem to apply equally to the congressman himself, who fathered and then failed to support an illegitimate child.

Though many worry about the corrosive effects of such cynicism, it's not necessarily a bad thing. To the extent that such cynicism acts as a limit on political power, and not merely as an excuse for its abuse, it is all to the good.

Put slightly differently: We do not know yet whether the Clinton presidency was an anomaly or a precedent. Regardless of who ends up moving into the White House come January, we will find that out soon enough. ◆

Nick Gillespie (gillespie@reason.com) is editor-in-chief of REASON.

SCOTT STANTIS

You think your proposal is good.

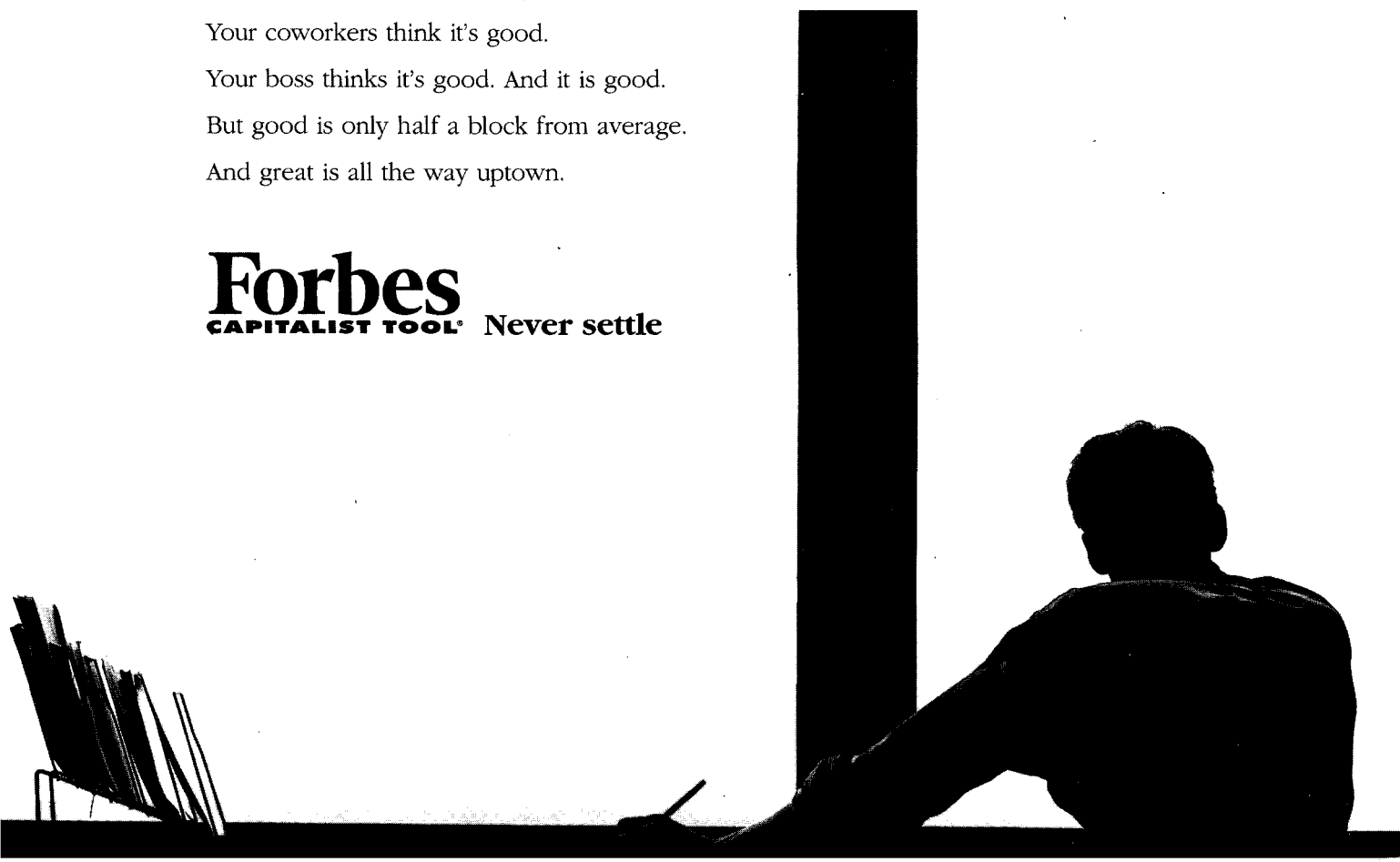
Your coworkers think it's good.

Your boss thinks it's good. And it is good.

But good is only half a block from average.

And great is all the way uptown.

Forbes
CAPITALIST TOOL® **Never settle**



REASON
www.reason.com

President Robert W. Poole Jr.
(bobp@reason.com)

Editor-in-Chief Nick Gillespie *(gillespie@reason.com)*

Senior Editors
Charles Paul Freund *(cpf@reason.com)*
Jacob Sullum *(jsullum@reason.com)*
Associate Editors
Brian Doherty *(bdoherty@reason.com)*
Jesse Walker *(jwalker@reason.com)*
Washington Editor Michael W. Lynch *(mwlynch@reason.com)*
Assistant Editor Sara Rimensnyder *(sarar@reason.com)*
Science Correspondent Ronald Bailey *(rbailey@reason.com)*
Editor-at-Large Virginia Postrel *(vpostrel@reason.com)*

Editorial Assistants Robert Honrado, Mary Toledo

Art Director Barb Burch *(bburch@reason.com)*

Webmaster Brian J. Taylor *(webmaster@reason.com)*
***Reason Express* Writer** Jeff A. Taylor *(jtaylor@reason.com)*

Contributing Editors
Gregory Benford, James V. DeLong, Edith Efron, Glenn Garvin, Steven Hayward, Thomas W. Hazlett, David R. Henderson, John Hood, Alan Charles Kors; Brink Lindsey, Carolyn Lochhead, Loren E. Lomasky, John McClaughry, Deirdre N. McCloskey, Michael McMenamin, John J. Miller, Charles Oliver, Walter Olson, John J. Pitney Jr., Thomas Szasz, Frederick Turner, Martin Morse Wooster, Cathy Young

Cartoonists
Chip Bok, Henry Payne, Scott Stantis

Publisher Mike Alissi *(malissi@reason.com)*
Circulation Director Alyssa Garey *(agarey@reason.com)*
Assistant Publisher Michael Orendy *(michaelo@reason.com)*

Legal Adviser Don Erik Franzen

Editorial and Production Offices
3415 S. Sepulveda Blvd., Suite 400
Los Angeles, CA 90034-6064
310-391-2245 Fax: 310-391-4395

Washington Office
1717 Pennsylvania Ave., NW, Suite 260
Washington, DC 20006
202-955-1324 Fax: 202-955-3187

Advertising Sales
The Townsend Group, Inc.
4920 Elm St., Suite 325
Bethesda, MD 20814
301-215-6710 Fax: 301-215-7704
(ads@reason.com)

Circulation Service
P.O. Box 526, Mt. Morris, IL 61054
1-888-REASON-8 (1-888-732-7668)
(subscribe@reason.com)

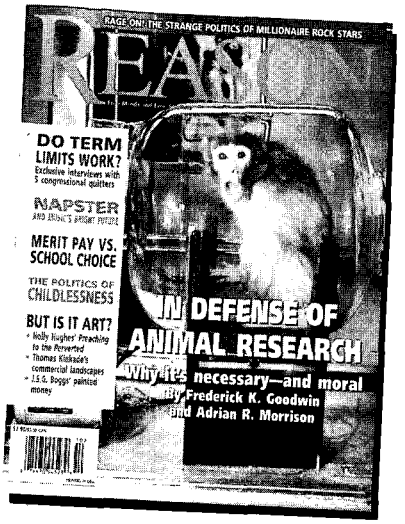
Reason is published by the Reason Foundation, a 501(c)(3) nonprofit educational foundation. Contributions to the Reason Foundation are tax-deductible. Signed articles in *Reason* reflect the views of the authors and do not necessarily represent those of the editors, the Reason Foundation, or its trustees; articles should not be construed as attempts to aid or hinder the passage of any bill before any legislative body. The claims and opinions set forth in paid advertisements published in this magazine are not necessarily those of the Reason Foundation, and the publisher takes no responsibility for any such claim or opinion.

Audit Bureau of Circulations Member

Reason Foundation
Trustees
Harry E. Teasley Jr. (Chairman), Thomas E. Beach, William A. Dunn, James K. Glassman, C. Boyden Gray, Neal I. Goldman, Stina Hans, Manuel S. Klausner, David H. Koch, James Lintott, Robert W. Poole Jr., Al St. Clair, Sarah A. O'Dowd, Walter E. Williams, Frank Bond (emeritus)

President Robert W. Poole Jr.
Vice President, Magazine Nick Gillespie
Vice President, Research Lynn Scarlett

Letters


RAGE ON! THE STRANGE POLITICS OF MILLIONAIRE ROCK STARS
DO TERM LIMITS WORK?
Exclusive interviews with 5 congressional quitters
NAPSTER
MERIT PAY VS. SCHOOL CHOICE
THE POLITICS OF CHILDLESSNESS
BUT IS IT ART?
IN DEFENSE OF ANIMAL RESEARCH
Why it's necessary—and moral
By Frederick K. Goodwin and Adrian R. Morrison

Animal Instincts

"Science and Self-Doubt," by Frederick K. Goodwin and Adrian R. Morrison (October), presents only one side of a multidimensional issue. Goodwin and Morrison refer to some "successes" in biomedical research that have stemmed from the use of animals, but they neglect the numerous failures. One only has to skim through C. Ray Greek and Jean Swingle Greek's recent book, *Sacred Cows and Golden Geese: The Human Cost of Experiments on Animals* (Continuum, 2000), to see some of these data.

The use of animal models often creates false hopes for humans in need. It's estimated that only 1 percent to 3.5 percent of the decline in the rate of human mortality since 1900 has stemmed from animal research. Early animal models of polio actually impeded progress on finding a vaccine. A major medical journal has called the war on cancer based on animal research a qualified failure. And over 100,000 people die annually from side effects of animal-tested drugs. It is also important to note that there are many people who believe that animals have rights but who do not condone violence.

As a biology professor, I believe that students do indeed "understand what the scientific method is really all about," but that they deeply believe that science can do a better job and that the numerous nonanimal alternatives that are available are a very promising option. Many are simply unhappy with the blatant abuse of animals in the name of science. Scientists should indeed be reflecting on their practices, and their self-doubt is understandable given the millions of animals used in research. Whether or not one believes that animals have rights, this is a deplorable state of affairs.

Marc Bekoff
Department of Biology
University of Colorado at Boulder
Fellow of the Animal Behavior Society
Boulder, CO

Frederick K. Goodwin and Adrian R. Morrison devote much of their article to discussing too-often overlooked data on the importance of animal research to human well-being. Yet since similar gains in knowledge could be had from involuntary experiments on human beings, arguments regarding the medical benefits of animal research are presumably moot if the *moral* arguments of the animal rights movement are correct.

It is thus disappointing that the most important element of Drs. Goodwin and Morrison's argument is also the most ill-founded. The authors claim that "rights stem from the uniquely human capacity to choose values and principles, then act on choices and judgment." Since, as they note, even the most intelligent animals lack this capacity, the concept of rights just doesn't apply.

Let us assume this account, undefended though it is, is the correct account of rights. Even if it succeeds in justifying animal research, it fails in a broader sense, for it justifies involuntary research not only on animals, but on human beings as well. If the reason animals lack rights is that they are incapable of "comprehending, respecting, or acting" upon rights, then infants, the retarded, and the

comatose (to name but a few) lack rights as well.

I believe there is a moral justification for certain sorts of animal research. But the idea that this justification can be made on the grounds that *all* human beings have certain rights which *all* nonhuman animals lack remains as undefended today as it was when philosopher Peter Singer criticized it over 20 years ago.

Matt Zwolinski
Department of Philosophy
Institutional Animal Care and Use Committee
University of Arizona
Tucson, AZ

In the spirit of REASON's commitment to clear thinking, the fallacies, non-sequiturs, and blind fundamentalism that pervade "Science and Self-Doubt" should be candidly identified.

Not only do these alleged supporters of science fail miserably to provide any balance in their assessment, but they repeatedly caricature their opposition, creating straw figures which purport to be adequate descriptions of complex and nuanced positions. What they affirm in concept—that we should think clearly—they deny in performance. In fact, their argument suggests they are confident that your readers are ignorant of issues and cannot think for themselves in a mature way.

Take their reference to "a campaign in New Zealand to give the great apes constitutional rights [by] the Great Ape Project, which seeks to award apes the same rights as those possessed by humans." Because The Great Ape Project seeks only certain fundamental protections—life, liberty, and freedom from torture—for gorillas, chimpanzees, orangutans, and bonobos, and not the right to vote, the right to travel internationally, etc., the authors' statement here is uninformed.

Further, the authors' fundamentalism, and indeed their superficial commitment to the humility implicit in scientific method, is betrayed by their abject failure to use scientific terminology. Humans are, scientifically speaking, great apes. The view that humans are not great apes and are separate from the animal kingdom had its origin in prescientific and religious thinking.

The authors owe this magazine's readership an apology.

Paul Waldau, D. Phil, J.D.
Executive Director
The Great Ape Project-International
Upton, MA

Those unfamiliar with animal rights ethics and with animal experimentation practice may find Frederick K. Goodwin and Adrian R. Morrison's article compelling. In contrast to their caricature, nearly all animal advocates oppose violence and they do not equate all humans and nonhumans. But they assert that, when it comes to pain and suffering, humans and animals should be considered equally. If infants, human mental defectives, and other vulnerable humans deserve protection from abuse, then nonhuman animals similarly deserve protection. In fact, many creatures, including members of many primate species, dogs, and elephants, display more intelligence than some humans and far greater compassion and altruism than most humans.

Animal experimentation does not even pass the "ends justify the means" test. As Dr. Neal Barnard and I argued in the February 1997 issue of *Scientific American*, the practice tends to be wasteful and frequently misleads investigators. Animal studies can neither prove nor disprove any theory about humans. At best, they can suggest theories about human conditions, but human clinical investigation has been and will remain a much more fruitful means of deriving theories relevant to human medicine.

Animal experimentation is inherently abusive, usually involving pain and suffering, always involving deprivation and death. Fortunately, in science, there are always many ways to address a given question. Dr. Barnard and I concluded that animal experimentation is a choice, and not a very wise or ethical one. If animals matter, we should choose other means of medical research.

Stephen R. Kaufman, M.D.
Co-Chair
Medical Research Modernization Committee
Cleveland, OH

"Science and Self-Doubt" accurately describes the tactics of the animal rights movement and its effect on medical research. The modern animal rights movement is an artifact of the war against Western values of freedom and progress whose foot soldiers have most recently been seen on the streets of Seattle, Philadelphia, Los Angeles, and Prague. The problem is not that animal rights extremists don't understand the processes of sci-

Libertarian Futurist Society

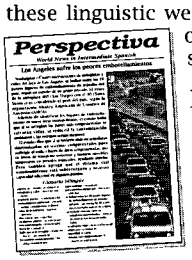
Join the LFS and vote for the Prometheus Awards for pro-freedom science fiction

"One of the best deals around. How else would I learn of the new SF books that I'd be most likely to want to read?" -- Robert Poole, Reason Foundation

89 Gebhardt Rd, Penfield, NY 14526
www.lfs.org

CONQUER SPANISH!

It's a battle learning another language. Attack your Spanish with ***Perspectiva*** or ***El Puente***. Vanquish boredom with these linguistic weapons - win the war on fluency with strong vocabulary.



Read Spanish with MORE comprehension and LESS frustration.

- **Spanish** at *YOUR* level - boosts comprehension!
- **Glossary** next to articles - improves vocabulary!
- **Spoken Idioms & Grammar** - increases fluency!

El Puente
High-Beginning Spanish
$39: 12 monthly issues

Perspectiva
Intermediate Spanish
$39: 12 monthly issues

SUBSCRIBE TODAY
or call for a **FREE BROCHURE** with sample articles & sample glossary.

EDUCATIONAL NEWS SERVICE
PO BOX 60478 - RES
FLORENCE, MA 01062-0478

www.ednews.com
(800) 600-4494

ence or the benefits derived from medical research. It is that these coercive utopians are determined to force a change in the moral and legal relationship of humans and animals by any means necessary.

Men like Goodwin and Morrison are to be applauded for their efforts to explain the moral basis for and practical necessity of using animals in medical research. But they, and we, must realize that animal rights extremists will not be moved by—and aren't interested in—dialogues of reason, as evidenced by the obscene attempt by PETA's Ingrid Newkirk to manufacture a moral equivalence between Hitler's concentration camps and chicken slaughterhouses.

In fact, as Drs. Goodwin and Morrison point out, the animal rights movement isn't much interested in the welfare of animals. National fundraising and publicity machines such as PETA and the Humane Society of the United States have a miserable record of support for local humane societies. Last year, PETA spent weeks "infiltrating" an underfunded local humane society in Portsmouth, Virginia, amassing "evidence of cruelty to animals," and pursuing a prosecution of the society's overworked and underpaid staff, forcing the shelter to spend about $12,000 of its annual $162,000 budget on legal fees to defend two employees who were eventually acquitted of all charges.

The animal rights movement is an exceedingly well-funded international movement with a comprehensive strategy which includes achieving political power. The Political Animal Lobby made the first-ever £1 million contribution to the Labor Party's successful 1996 campaign in Great Britain. Nor is the movement unsophisticated in the uses of power. The less flamboyant but equally determined Humane Society of the United States funds a national, multiyear campaign called "First Strike!" that pays researchers to "find" a link between animal cruelty, juvenile delinquency, domestic abuse, and other violent crime, with plans to have animal welfare officers, teachers, social workers, and law enforcement officials "share information" on juveniles who abuse animals in order to establish a "tracking system" to identify likely perpetrators of other violent offenses.

We may grant supporters of the animal rights movement the right to believe anything they wish about the proper relationship between humans and animals. What we cannot permit is their too frequent resort to misrepresentation, violence, and coercion. It makes no difference whether we lose our freedoms to an overreaching state or these ideological enemies of the future; the effect will be the same. Drs. Goodwin and Morrison need to keep fighting, and the rest of us need to start helping them.

David N. Narr
Virginia Beach, VA

Adrian R. Morrison and Frederick K. Goodwin reply: David Narr presents additional evidence of the dangers posed by the animal rights movement to our civilized society. He does not exaggerate and he rightly warns us that "we cannot permit their too frequent resort to misrepresentation, violence, and coercion." Some of the other writers, apologists for the animal rights movement, provide glaring examples of the first of these activities along with evidence of confused thinking.

In reference to Paul Waldau's letter, we said nothing about the phylogenetic placement of humans and great apes. Rather, we argued that as humans we are members of a moral community that can know right from wrong. We have special duties toward our fellow man and must consider the welfare of all animals very seriously as well. We are the only beings that can do the latter. The Great Ape Project does seek constitutional rights. Great apes cannot, of course, vote, because they cannot act responsibly; they do not know right from wrong. We have strong obligations or duties toward them when they are under our control, but that does not mean they have constitutional rights. As for apologies, those who engage in "misrepresentations, violence, and coercion" in order to impede life-saving medical research—and their defenders—owe a collective apology to all of humanity.

Stephen Kaufman predictably cites an article he and Neal Barnard wrote for *Scientific American.* He does not mention that one of us (Morrison) wrote a countering article in the same issue and then a rebuttal to the arguments presented by Drs. Barnard and Kaufman in the Web magazine *HMS Beagle* (biomednet.com/hmsbeagle/1998/25/people/op_ed.htm). We might also note that Dr. Kaufman was publicly chastised by none other than Albert Sabin, developer of the oral polio vaccine, for misrepresenting medical history, and Dr. Barnard was rebuked by the 1990 House of Delegates of the American Medical Association for the same reason.

Marc Bekoff offers us some illogic when he argues that "100,000 people die annually from side effects of animal-tested drugs." Actually, a company must test twice as many animals as humans on a particular drug before it is released for wider use. That unexpected side effects might appear after millions of doses of a drug have been taken by people following tests on animals and then *human volunteers* can hardly be blamed on the initial animal tests. Would he have us test millions of animals and humans first—and be willing to pay for the vastly more expensive drug? Would he be willing to stand in line before the first mouse, rat, or monkey when a new drug is tested? (The book by the Greeks to which Professor Bekoff refers offers more of the same.)

If Matt Zwolinski cannot reason that a human infant is worthy of more protection than a rat or a monkey, we cannot answer him.

Communicate with REASON

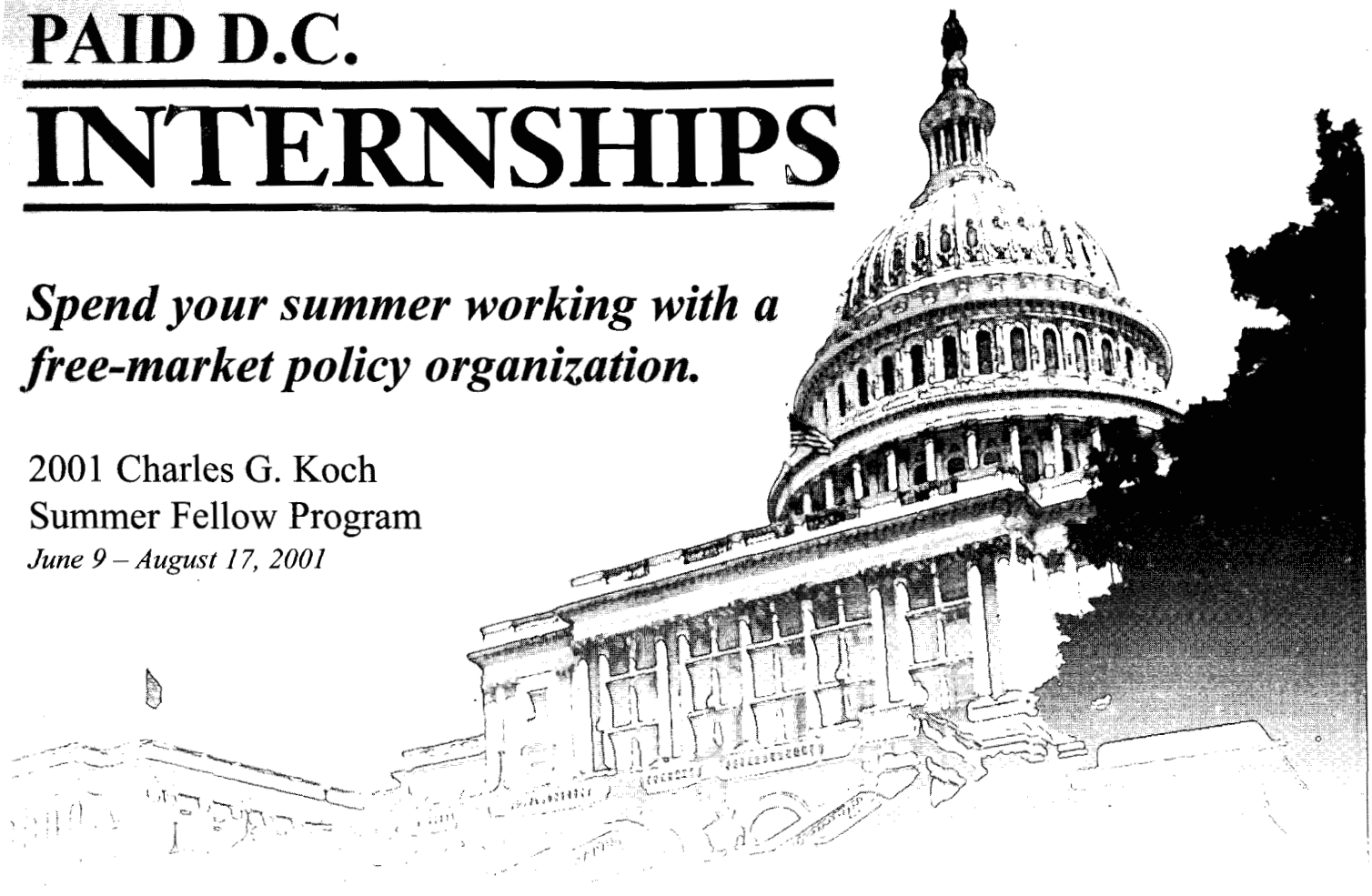
We appreciate your letters, typed double-spaced and limited to 250 words. Letters sent to REASON will be considered for publication (unless otherwise noted) and may be subject to abridgment or editorial comment. Any letter intended for publication must include the sender's name, address, and daytime telephone number. Letters may be sent to letters@reason.com or mailed to:

3415 S. Sepulveda Blvd., Suite 400
Los Angeles, CA 90034-6064

REASON NEWS

Walter Olson's column remains on hiatus but will return next month.

PAID D.C.
INTERNSHIPS



Spend your summer working with a free-market policy organization.

2001 Charles G. Koch
Summer Fellow Program
June 9 – August 17, 2001

Do more...

. . . in one summer than most people do all year. Through the Koch Summer Fellowship program, you can gain experience working with top policy experts, journalists, and academics while exploring market-based solutions to social and economic problems.

In addition to an internship, participate in policy analysis seminars, career workshops, and team projects. If you're looking for an internship that allows you to pursue innovative policy solutions, the Koch Summer Fellow Program is for you.

For anyone interested in public policy and free markets, there is no better experience.

- Public Policy Internship
- $1,500 Stipend
- Furnished Apartment
- Policy & Career Workshops

Apply at: ***www*.TheIHS.*org***
Application Deadline: February 15, 2001

INSTITUTE FOR HUMANE STUDIES
GEORGE MASON UNIVERSITY

Citings

Closing Time

By Sara Rimensnyder

You wouldn't think you'd need a pharmacist to buy a newspaper. Or a pair of pantyhose. Or a box of jelly donuts. But that's the situation in Connecticut, where state regulations require certain drugstores to shut their doors entirely if there's no druggist on duty. Now that an increased education requirement has caused a shortage of pharmacists, the law is inconveniencing customers and businesses alike. Neither the stores nor the state keeps track of shutdowns, so it's unclear how many shops have been affected. But anecdotal evidence suggests that employees at more than a dozen stores got an unexpected day off over the Labor Day weekend.

The closure requirement is an irksome remnant of the days when drugstores sold drugs and convenience stores sold snacks and periodicals. It's just one of many regulations dictated by Connecticut's Pharmacy Commission. For example, there's the "tech ratio": For every pharmacist, there can be no more than two technician assistants. The rule is supposed to enable pharmacists to make sure the technicians don't screw up when filling bottles, inserting cotton, and putting on caps. Such a requirement works well for pharmacists in theory: Like licensing, it restricts entry into the profession and keeps its practitioners in high demand. But in practice, now that pharmacists are spread thin, it burdens them with grueling hours and understaffing.

The increase in the education requirement—part of a nationwide professionalization drive—is directly responsible for the sudden pharmacist shortage. Connecticut pharmacy schools didn't graduate any classes this year; would-be graduates instead have to stick around for a sixth year. At the same time, fewer students are enrolling in pharmacy schools. Neighborhood pharmacist has never been a glamorous career choice, and the position's growing reputation for stress probably isn't adding any allure. Nor is the extra year of training.

Grace Nome, a lobbyist for the industry group Connecticut Chain Drug Stores, questions whether the state needs such inflexible restrictions. She mentions a rule mandating that pharmacies stay open for at least 35 hours per week, a measure designed to protect the consumer. "In all honesty, you can only make a customer mad so many times, and then they're not coming back," she says. Nome is baffled by the tech-pharmacist ratio, which she sees as placing an unneeded burden on working pharmacists. "These pharmacists need relief," she says. "The tech ratio should be increased immediately to 3 to 1." After all, how many pharmacists does it take to screw a cap on a bottle?

Hands-On Experience

By Michael W. Lynch

The disability access movement may soon have another victory under its belt. In September, Kenneth McGrath, owner of an English lap dance lounge called the Pussycats Club, petitioned local authorities for an exception to the strict no-touch clause in his establishment's license. The proposal originated with two blind attendees at a stag party who felt that touching the girls would give them a better feel for the contours of the dancers' art.

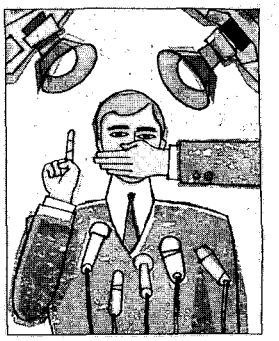
"Given their disability," McGrath told London's *Daily Telegraph*, "they felt controlled touching ought to be permitted for registered blind persons only and with the lap dancers' consent." A survey of the club's employees found

Balance Sheet

By Jeff A. Taylor

ASSETS

△ △ △ △ △ △ △ △ △ △ △ △ △ △ △ △

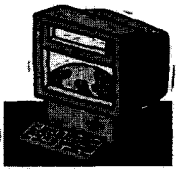


▲ Leak Plug. President Clinton vetoes a wacky move to create an official secrets act punishing anyone who "leaks" classified info. The law would have relieved prosecutors of the burden of showing that a leak actually harmed national security.

▲ Silicon Rainbow. A study in the journal *Demography* finds that diverse culture, including a robust gay community, predicts how much tech-boom local communities see.

▲ Block Party. Stodgy 68-year-old Lego releases the source code to its popular Mindstorms robot-building blocks. Adult coders are delighted and another generation of geeks ensured.

▲ Plan Maryland. Amish and Mennonite farmers refuse to participate in Maryland's tobacco eradication program, calling it shameful welfare. Tobacco-settlement money pays farmers $1 per lb. per year for a decade to forego growing.



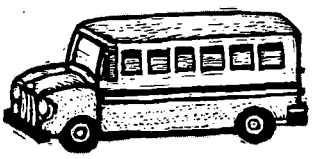
▲ Filter View. Hacking gets backing from the U.S. Copyright Office, which rules that showing how so-called Web filtering software works does not break the law. The ACLU argued that keeping blocked sites secret violated free speech.

▲ Millennial Masala. Modern life trickles down to women in India as they fill tech jobs in and around thriving Bangalore. A local association of women entrepreneurs teaches village women to set up businesses like small computer centers where customers can log on for a fee.

▼ **Driving Phoned.** U.S. lawmakers rush to outlaw driving while talking on a cell phone despite paltry evidence that it causes accidents. Up next: a ban on talking to passengers or singing with the radio?

▼ **Log Rolled.** Election officials and judges move to squash Nader-trader Web sites, arguing private deals to swap Gore votes for Nader votes across state lines violates the law. But when Congress does such swaps, it's called statesmanship.

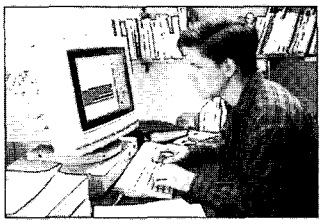
▼ **Bad Choices.** Overreaching school choice initiatives in Michigan and California keep the idea a total loser in ballot questions. Confirms that choice requires that oh-so-rare element—political leadership.



▼ **L. Ron Hubbub.** Microsoft bows to German government pressure to remove a defrag utility from Windows 2000 there. The feature was designed by a firm with a Scientologist CEO, and Scientology is viewed with hysteria in Germany.

▼ **Vodka Chronic.** Masked police in Moscow storm the offices of Smirnov as part of a dispute over the company's ownership. Guns, threats, and squatting often determine ownership in Russia's new economy. Whatever it is, it ain't capitalism.

▼ **Tech Trough.** Surprise! Big corporate players line up behind tax breaks for closing the mythical digital divide. Telecom firms and fiber optics maker Corning push for wiring tax credits; Gateway and others want a new break for donating used PCs.



LIABILITIES

that 11 of the 15 dancers would consent, under certain restrictions. The only thing standing in the way of 13 people's happiness is the local government, which has promised to consider the request.

Artistic License

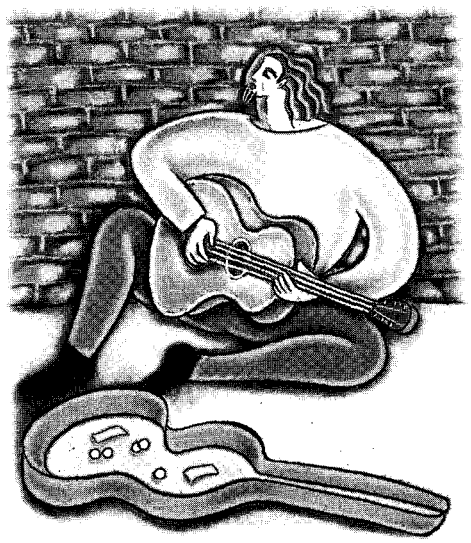
By Brian Doherty

The college town of Gainesville, Florida, awash in small, quasi- or unprofessional local bands, recently realized it was sitting on a potential gold mine in occupational licensing fees. Since 1953, a local statute has listed "artist"—no further elaboration given—as a "professional" category required to pay a yearly occupational licensing fee to the city. The current yearly fee is $100, same as for a lawyer.

In September, the city's Department of Cultural Affairs contacted bands with whom it had contracted for downtown public concerts, notifying them of a meeting to discuss a new enforcement policy for anyone making money as a musician. Someone started spreading the notice on the Internet, and over 150 local musicians showed up.

Gainesville musician Alyson Carrel says, "Not only were the city and Department of Cultural Affairs unprepared for this type of turnout, but they were unprepared to answer even the basic questions raised. When asked the legal definition of an artist, the city and Department of Cultural Affairs were unable to answer. At one point they said all performers—for instance, all six members of PopCanon, my band—would have to pay an occupational license fee of $100 apiece, each year they are doing business. After further questioning, they changed their minds, saying, Oh no, only the organizer for the band, the one who books the show and receives payment, would need to pay."

Other questions—for instance, are club owners responsible for checking the licenses of the bands they hire?—also went unan- ▶



QUOTES

"I feel like **I shouldn't have been called into his office because of my costume** when other people dressed as demons weren't. **There was a kid dressed as Hitler, and nobody said anything to him**, either."
—Gabriel Koppelberger, 17, of Tennessee's Page High School, who was sent to the principal for wearing a Jesus Halloween costume, in the November 3 *Tennessean*

"In one of the narrowest presidential votes in U.S. history, either George W. Bush or Al Gore was elected the 43rd president of the United States Tuesday, proclaiming the win 'a victory for the American people and the dawn of a bold new era in this great nation.'...**Bush or Gore attributed his victory to his commitment to the issues that matter to ordinary, hard-working Americans.** Throughout the campaign, the Republican or Democrat spoke out in favor of improving educational standards, protecting the environment, reducing crime, strengthening the military, cutting taxes, and reforming Social Security. **He also took a strong pro-middle-class stand, praising America's working families as 'the backbone of this great nation.'"**
—*The Onion* (theonion.com), November 8

BRICKBATS

◆ Police in Little Rock, Arkansas, are nothing if not efficient. They picked up 70-year-old Betty Deislinger at a meeting of the city's historic commission. Her crime? She refuses to remove burglar bars from her house, which was built in the 1870s, violating an ordinance governing the historic district in which she lives. She faces a fine of $10 to $500 a day until she complies with the law.

◆ The U.S. Forest Service apparently feels the best way to crack down on marijuana-growing in Northern California's Mendocino National Forest is to harass Latinos. Rangers have been instructed to "develop probable cause" for stopping cars leaving the forest; if "the vehicle has Hispanics inside," its passengers must be interrogated, even if no drugs are found.

◆ In Maryland, police are supposed to turn any cash seized from alleged drug dealers or gamblers over to the county treasury. But it seems that the sheriff's department in Prince George's County has been hiding thousands of dollars while lobbying for a change in the law that would allow it to keep the money. Some $45,000 not found during an audit was later turned over to the treasurer after a sheriff's department employee tipped off authorities. Now the whistleblower is being fired.

swered. In the face of strong citizen objections, the city claimed state law gave it no leeway in enforcement. But Gainesville musician and lawyer Brian Kruger says that's nonsense. The state merely allows the city to charge occupational licensing fees, he explains. It doesn't define the categories for which the fee must be charged. The "artist" category is a local innovation, not a state mandate.

"If they wanted to make a big deal and enforce it, they'd get their butt kicked in court," Kruger says. "If an ordinance doesn't provide a definition and contains penalties, the ambiguity would likely be construed against the government agency. There are different definitions of *professional*, and they'd have to pick the least restrictive one that applied to the fewest people. And no one makes their full living as a musician here."

Gainesville's Department of Cultural Affairs has refused to comment, saying it is awaiting guidance from the state attorney general's office

DARE Aware

By Jacob Sullum

Critics of Drug Abuse Resistance Education, the program in which police officers tell kids to just say no, have long been frustrated by DARE's ability to thrive on anecdotes and enthusiasm. Despite the lack of credible evidence that it does what it's supposed to do, it is by far the most widely used anti-drug curriculum in the country, reaching more than 20 million students each day.

But DARE's 17-year free ride may be slowing down. Last summer, calling DARE "a fraud on the people of America," Salt Lake City Mayor Ross C. Anderson pulled it out of the city's schools, saying it should be replaced by a program that has actually been shown to reduce drug use. "For far too long," Anderson wrote in *The Salt Lake Tribune*, "our drug-prevention policies have been driven by mindless adherence to a wasteful, ineffective, feel-good program."

Although DARE is still used in about three-quarters of U.S. school districts, Salt Lake City's is one of several to abandon the program in recent years. While condemning Anderson's decision, DARE supporters were unable to rebut his charge that published, peer-reviewed research indicates the program is ineffective at best.

In an op-ed piece for *The Deseret News*, DARE America President Glenn Levant said "we are more than willing to debate the efficacy of DARE" but offered no evidence that the program works. Kathy Stewart, president of the Utah DARE Officers Association, told the *Tribune*: "I don't have any statistics for you. Our strongest numbers are the numbers that don't show up." And Tibby Milne, executive director of the pro-DARE Utah Council for Crime Prevention, confessed that "it's very hard to say how many kids do not use drugs because of DARE. We're

☛ "What the Pentagon is to the military-industrial complex and the White House is to the political structure, advertising is to the free market. A highly visible symbol of American 'capitalism,' often loud and garish, advertising receives more than its share of abuse. Vilified by radical, liberal, and hip-capitalist alike, it has its detractors, especially on Madison Avenue. As one ex–creative director said, 'For a while it was fun, but in the end did I really care who sold the most tooth paste?'"

—Lanny Friedlander, "In Defense (?) of Advertising"

☛ "Most opponents of SST subsidies characterize the program as a vast boondoggle to benefit a small minority of jet-setters at the expense of everybody else. They are right. But what many of them fail to realize is that the entire commercial aviation industry is just such a creature of the state—a vast empire which mouths the slogans of capitalism and free enterprise, while it is being lavishly supported and protected by the state—with your money."

—Robert Poole Jr., "High Jacking the Taxpayer"

☛ "[On a recent cover,] *National Review* freely proclaimed...: 'Did the United States destroy the American Indian? No...but it should have.' The man who wrote that ought to be ashamed of himself. His character is revealed for everyone to see. A friend of mine used to tell such persons, 'Your soul is showing!'"

—Rosalie Nichols, "America the Beautiful: On Whose Land?"

trying to get that information."

The response to Anderson's decision from the local press was largely supportive. "While the decision was not popular, Anderson appears to be on solid ground," *The Deseret News* said. "DARE is a popular program with broad support," said an editorial on KSL-TV, "but it certainly isn't sacrosanct. Along with Mayor Anderson, communities should dare to question DARE."

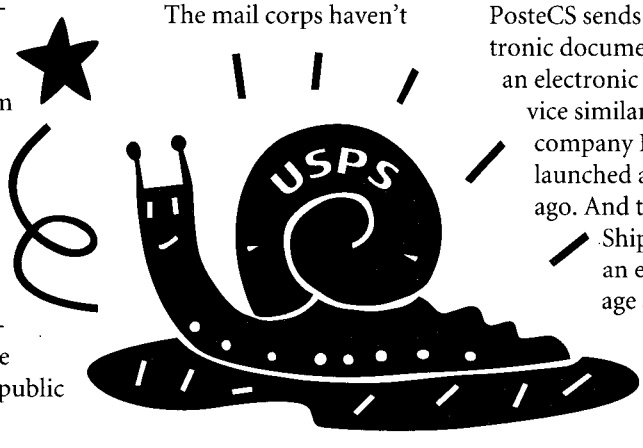
USPS.com

By Sara Rimensnyder

Post office bigwigs must have finally heard one "snail mail" crack too many. Or else they listened up when analysts told them that an upstart technology called e-mail was going to gnaw Pac-Man-style into their $35 billion in first-class mail revenue.

On July 31, *The Wall Street Journal* reported that the U.S. Postal Service had plans—big plans—to assign everyone in the country a free "usps.com" e-mail address, to be used either as an alias or as a new account. The address would begin with a person's initials, followed by her nine-digit zip code and the last two numbers of her street address.

The postal service has refrained from releasing such details as the date, or even the year, that the program would launch. But it has hinted at some rationales for the scheme, including establishing the postal service as the primary communication ferry between the government and the public and helping direct marketers seamlessly shift operations to the electronic world.



The mail corps haven't completely ignored the Internet before now. Three services are already in place. PosteCS sends secure electronic documents. Ebillbay, an electronic payment service similar to the private company Paypal, was launched a few months ago. And then there's Shipping Online, an electronic postage service. Last September, the post office launched another service, allowing customers to send electronic documents to be printed, stuffed into envelopes, and delivered to a mailing list for 41 cents per letter.

Meanwhile, private electronic commerce firms and hundreds of free e-mail providers already have services on the Web identical to those running or in the works at the post office. Rick Merritt, executive director of the Web site postalwatch.com, won- ▶

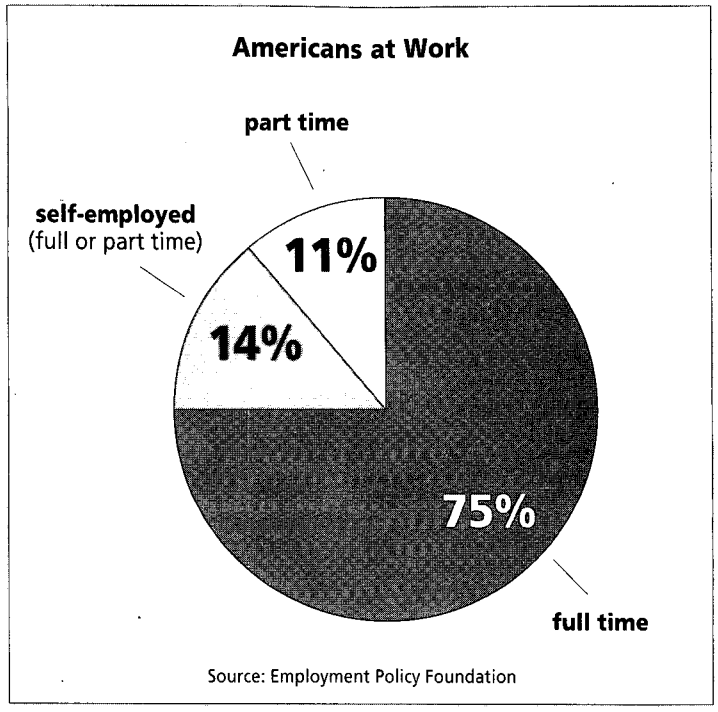
DATA

Same as the Old Boss

By Michael W. Lynch

We've heard a lot about the rise of a "free-agent nation" in today's fast-paced, tech-driven economy: Fans find it liberating, and foes fret about the disappearance of stable, full-time jobs. But a new study by the industry-funded Employment Policy Foundation finds that the more things change, the more they stay the same. In 1955, 75 percent of employed Americans worked a traditional full-time job, 10 percent worked part time, and 15 percent worked for themselves. In 2000, 75 percent of Americans still paid their bills with wages from a traditional full-time job.

Some things have changed. Today's free agents are more visible. "In the 1950s and 1960s, there were a lot of merchants, farmers, and tradespeople among the self-employed," says Ron Bird, chief economist at EPF. "The nature of the self-employed is now more professional- and consultant-oriented." And since the size of the labor market has more than doubled since 1955, there are more free agents, even if their proportion of the work force is holding steady. Not that there's anything wrong with that. Says EPF President Edward E. Potter, "From every perspective—schedule, job arrangement, or expected tenure—it is clear that the American labor market is providing the jobs that people want, that fit their career needs, and that accommodate their lifestyle."



BRICKBATS

◆ John Yount, a member of the Metro Nashville Teachers Association's political action committee, supported George W. Bush for president. When he found out the union planned to show a Gore campaign video at a teachers' conference, he said that Bush deserved equal time. Nothing doing, the union leaders replied. So Yount wrote to conference attendees about the disagreement, enclosing a Bush brochure. According to Yount, the MNTA then told him it would be a violation of union rules for him to campaign for a candidate they didn't support. That includes putting a bumper sticker on his truck or a sign in his yard, or even talking about his candidate in public.

◆ In Richmond, Virginia, arsonists torched a banner honoring Confederate Gen. Robert E. Lee. The Sons of Confederate Veterans are demanding that the police treat the offense as a hate crime.

◆ Where It's At, a bar in Rangely, Colorado, printed T-shirts that showed two cartoon aliens in the act of copulation. In response, the town government shut the business down for five days, including the opening days of deer hunting season, the bar's busiest weekend of the year. Under the liquor code, taverns aren't allowed to depict sex acts in their advertisements or decorations.

—Charles Oliver

ders, "What makes the postal service think they're going to be more attractive than a private concern like Paypal?"

Drug War Doctors

By Michael W. Lynch

While Congress frets about how insurance companies use medical information, the Supreme Court is considering a case with far more worrisome implications. *Ferguson v. City of Charleston* asks not just whether some people have the right to take secret peeks at your health but whether they can compel you to provide medical evidence against yourself.

At issue is a drug abuse intervention program hatched in 1989 by the Charleston cops and the Medical University of South Carolina. Under it, pregnant women seeking prenatal care were tested for cocaine with neither warrants nor the women's consent. Originally, if women tested positive, they were arrested for child neglect or for distributing drugs to a minor, sometimes just hours after giving birth. In 1990 the program was changed to offer drug rehabilitation before sending new or expectant mothers to the slammer.

Ten women are challenging the program on the grounds that, by neglecting to establish probable cause and secure a warrant before searching them, the health care workers who cooperated with the police violated their Fourth Amendment right to privacy. The U.S. Court of Appeals for the 4th Circuit found the searches constitutional under a "special needs" exemption that the women's attorneys say leaves pregnant women with less constitutional protection than other Americans—a situation they asked the Supreme Court to correct in October.

The Center for Reproductive Law and Policy, the public interest firm that is representing the women, points out that the program is not just bad law: It's counterproductive policy. Once word gets around that going to the doctor can mean going to jail, some pregnant women will shy away from important prenatal care. "I will never trust a doctor again," says Lori Griffin, who was arrested in 1989 during such a visit and spent the last three weeks of her pregnancy in jail. "They tormented me."

Child Proof

By Sara Rimensnyder

Employees of a Head Start program in Cleveland found a surefire way to recruit the most well-behaved youngsters: They invented make-believe kids. Faced with flagging enrollment, employees of the Ministerial Day Care Association, a nonprofit provider, padded 1997 class rosters with more than 60 fake names—enough extra toddlers to bring the program an additional $250,000 in state and federal funding, the Cleveland *Plain Dealer* reported last fall. Former employees informed state and federal officials that the ruse was encouraged by the association's board of trustees, all of whom were local ministers. (The ministers responded by suing eight workers for character defamation.)

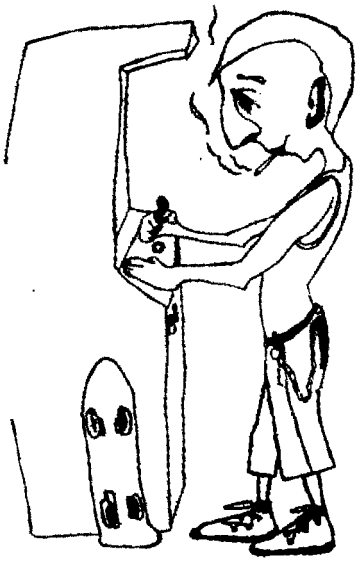
As of press time, the association still hadn't produced records documenting the services it insists it provided to approximately 1,600 children in 1997. In a letter, association officials informed investigators that the files were lost, destroyed, or stolen.

Head Start fraud certainly isn't unheard-of. But rarely is it so creative. The Cleveland scandal may be matched only by the industrious director in New York who embezzled a quarter million in Head Start funds in 1999, to subsidize a film studio, a record company, and a clothing business.

Saving Indianapolis

By Charles Paul Freund

Is Indianapolis safe yet from the menace of arcade video games? Certainly, the town is doing everything it can to protect itself. As of September 1, any coin-operated game that featured sexual content or graphic violence was supposed to be labeled accordingly. In addition, such machines were to be kept at least 10 feet from games suitable for families (if there are any). The sex-and-violence machines would be separated from their G-rated brothers by a curtain or a wall, so as to make them



completely irresistible to minors.

OK, the part about making them irresistible was a joke; the city wanted the machines to be hidden so minors wouldn't be able to see them. That's a joke, too, but at least it's Indianapolis' joke.

The punch line, of course, would come at the expense of arcade operators. They could be fined $200 per day for violating this ordinance. If a business is cited for three violations in a year, the city lifts its license.

Before this ordinance was able to save Indianapolis, however, the game industry sued. Although the city won the first legal skirmish, the industry has asked for an injunction. Hearings were set to begin after Thanksgiving, with a stay in effect until then.

This is a remarkably late battle in the 20-year-old video game wars, and it is taking place just as Sony's PlayStation2 is beginning to sweep the country. PlayStation2 allows people to engage in video game mayhem in their own homes, with impressively realistic graphics, and to do so without labels or intervening curtains or walls.

It's a miracle, or at least a wonder, that Indianapolis has survived this long, given that arcade games have been threatening the nation's youth for decades. Pinball, for example, may not have had graphic-violence problems, but any time one or more people are observed enjoying themselves, office-holders understand that it is their grave duty to do something about it.

Thus, pinball was often banned because it was perceived as a mob-controlled game of chance. Indeed, it was "a vicious racket" that "bleeds millions of dollars each year from youngsters." It "fleeces children of their carfare, their lunch money, their allowances, and in some cases drives them to crime to obtain the funds for their craze." Or so said *Better Homes and Gardens* magazine back in 1957.

Such insights got pinball banned in many communities over the years, at least for a while. Which probably explains how the country survived at all. ◆

SOUNDBITE

Labor Pains

By Sara Rimensnyder

Leo Troy

"Freedom of association is a right under severe, often buckling pressure when workers in the United States try to exercise it." That's the conclusion of *Unfair Advantage*, a new study commissioned by Human Rights Watch (available online at www.hrw.org/reports/2000/uslabor). According to the report, employer impunity and U.S. law have increasingly deterred workers' attempts to unionize, in flagrant disregard of international human rights law.

But the report doesn't discuss labor's most significant stumbling block: Unions have failed to respond to workers' changing needs in the modern economy. So argues Rutgers University at Newark economist Leo Troy, a feisty, longtime, and prescient analyst of unions. "I've been saying that unions were declining long before it was generally believed....At this point in my life, I don't feel a great need to be polite," Troy, well into his 70s, told *Rutgers Focus*. Assistant Editor Sara Rimensnyder interviewed him by phone in October.

Q: Is Human Rights Watch correct that union busting by employers is on the rise?
A: I say [HRW] is wrong, but let's assume [the report] is right about the increase in labor violations, just for the sake of argument. Since 1970, private sector unions have lost almost 50 percent of their membership. It's baloney to attribute this to employer opposition. Employer opposition only has one application, in organizing the unorganized. Many people mix up the loss of unionism in *existing* labor-management relationships and efforts by unions to organize the unorganized.

People never discuss *employee* opposition to unionism. There was a private poll done in 1984 by Lou Harris on behalf of the AFL-CIO. He found that 65 percent of nonunion workers said they would not vote for a union in a secret ballot. The top reason was that the workers felt the unions had become irrelevant. They felt they didn't need a union to solve their problems. "Fear of the employer" ranked near the bottom of the list. That was a kick in the solar plexus from the standpoint of the unions. And that was '84. Those sentiments would be even stronger now.

Q: Do U.S. laws adequately protect unions?
A: Every single G-7 country—and above all, Canada—has seen a decline in private sector unionism. Canada has much more pro-union legislation than the United States; pro-union people say we have to copy Canadian labor law. But if the Canadian law is unable to prevent the decline, why should it make a difference if the U.S. followed suit?

Q: Is there any future for collective bargaining?
A: In the book I'm writing now, *Twilight for Unionism*, I make clear that twilight doesn't mean extinction. Unions will remain important in certain private industries in the United States, like the automobile industry, the steel industry, and the railways.

All Losers' Night

In which our man in Washington desperately cruises for losers on Election Night and learns from experts how the new president should—must!—govern

By Michael W. Lynch

Subj: Looking for losers in all the wrong places
Date: 11/08/00
From: mwlynch@reason.com

Pick your cliché to describe Election Night in D.C. "It's a nail biter," a weary fellow at the Democratic National Committee bash at the Mayflower Hotel told me. At the Republican's party, an Arlington lawyer put it more colorfully: "Tighter than a piece of coal in Shannon Doherty's ass."

I spent the night and much of the early morning hopping from party to party in search of bad news. There's always plenty of it, since with elections somebody has to win. My goal was to spend the night with the losers. Actually, I spent most of the night assuming I was a loser, since I had bet $200 that Gore would take the White House and $50 that the Dems would take back the House.

My first stop was the DNC bash at the Mayflower Hotel, where I picked up my press credential, purchased a $5 Bud Light, and soaked in the scene. It was early and too cheery for my taste. At 7 p.m., CNN said Georgia and Virginia were too close to call, and the room erupted in cheers. Vermont went to Gore. "Big surprise," said one cocky fellow when we learned that Bush had secured South Carolina.

Things were far more tense a short walk away at the Capital Hilton, where the RNC was throwing its bash. "We expected to lose Florida," explained Republicanoid radio host Armstrong Williams. "But we're going to win Pennsylvania." Early in the evening, things were gloriously grim at the RNC party. In line for a $4 beer, a woman, upon learning I was press and had once lived in California, confided how she too once lived there. "I left California because the Mexicans were taking over," offered the fiftysomething bottle blond, reminding me why I'm not a Republican.

RNC Chairman Jim Nicholson introduced the emcee for the night, a comedian who doesn't use four-letter words (even on Election Night). Not surprisingly, he was a comedian in name only. "He hasn't tickled my funny bone yet," said a young guy who nodded to the band and asked, "Why do Republicans always get white bands who play Motown all night?" But it wasn't the comedian or the band that was bringing down the party. It was the fact that CNN and other networks had at that point called Florida for Gore. Michigan went the V.P.'s way as well, and by 9 p.m. it looked like an early wrap for Gore.

It was time to catch a cab to Republican operative Grover Norquist's party, where a committed group of conservative activists would surely be bumming in their beer.

"It's closer than we'd like it to be," Grover admitted as he emptied a kitchen trash can at 9:30 p.m. "I don't see how you can call Florida with 600,000 absentee ballots out." I grabbed a beer and followed Grover upstairs, where former Speaker Newt Gingrich was watching the returns. The often talkative pol wasn't saying much as he watched with his third wife.

The nadir of the night for the GOP came at 9:50 p.m., when someone announced that New Mexico had gone to Gore. Five minutes later, CNN had put Florida back into play. "We're taking back Florida one geriatric at a time," exclaimed one merry, and very drunk, conservative.

Grover's was now too cheery, so I caught a cab back to the DNC party, where folks were sure to be grieving. "If it comes out that Nader caused Gore to lose, I will go to Nader meetings and throw tomatoes," D.C. lawyer Mike Castellano told me. Echoed Georgetown law student Rachel Entman, "I want to know how Nader feels if he single-handedly screws up the country." (My hunch: Pretty damn swell.)

It was a bad night in many respects for Democrats, especially locally. By 1 a.m., the announcement came that they wouldn't take the House. Though a dead Democrat would beat a live Republican in Missouri (they don't call it the Show Me State for nothing), Virginia Sen. Chuck Robb, the profligate son-in-law of LBJ, was a goner. The ballroom was emptying out so I headed back to the RNC to see how they were holding up in apparent victory.

"What's up with the bullshit in Florida?" asked Gen-X Republican operative Mario Lopez, who was glued to the TV at the RNC party. "They won't call it with 93 percent of the precincts reporting." Well, "they" did call it for Bush, at approximately 2:15 a.m. And then they took it back at 4:06 a.m. Gore was understandably not willing to concede the lifelong ambition of at least two generations of his family.

As the sun broke over the Potomac

HENRY PAYNE

and the ghost of Rutherford B. Hayes laughed somewhere, CNN put the electoral count at 249 for Gore and 246 for Bush. The worst part of all this waiting, I thought, was that one of these guys was eventually going to win. I consoled myself with the idea that I might not have spent the night with a loser after all.

Subj: Bad news for Gore—and for the rest of us
Date: 11/09/00
From: mwlynch@reason.com

The theme of the day, according to Brookings Institution fellow and *Washington Post* columnist E.J. Dionne, was "Honey, who blew up our electoral system?" If you want a digest form of the arguments for expanded government you'll be hearing over the next few years, this influential D.C. think tank is the place to go.

I went there yesterday to check out a standing-room-only panel on where we go from here. Even a few minutes spent not knowing America's ultimate leader is scary as hell for the good-government liberal folks at Brookings (and many others in this one-company town). So no one smiled or chuckled, much less applauded, when Dionne said the presidential election had produced "a serious crisis of legitimacy in our government."

Thomas Mann, another Brookings fellow, pointed out that we may end up with a president who lost the popular vote and won the electoral vote mostly because a bunch of geezers in Palm Beach can't read a ballot. "If nothing else changes, we will all know that Al Gore in effect won Florida," pronounced Mann. "But George Bush will be declared the winner of Florida and become the president of the United States."

Whether that constitutes a "crisis" is a judgment call. Here's the real thing: If the old ladies from Palm Beach who were screaming on MSNBC last night are in fact incapable of reading a ballot properly, they are definitely too infirm to be driving to the polls or anywhere else in the Sunshine State. They pose a more immediate danger to fellow citizens as drivers than as voters. Accidentally electing a guy who has his own driving problems just doesn't compare.

Mann discounted the split between the popular and electoral votes as no big deal. "We have a constitutional system and the rules of the game call for a majority of the electoral college." In fact, he seemed to call on Al Gore to pull a Richard Nixon, circa 1960, for the good of the country. Tricky Dick, said Mann, "did an honorable thing when he conceded the election even though there were questions raised about the legitimacy of the count in Illinois and Texas, two states that, had they gone Republican, would have made Richard Nixon president of the United States. It may well be that Al Gore is going to have to suck it up and concede the election to George W. Bush."

The worst part of all this waiting, I thought, was that one of these guys was eventually going to win.

That was the bad news for Gore—everyone on the panel basically assumed a Bush presidency and then offered advice on putting together a governing coalition. The bad news for the country is this: Their idea of a governing coalition is one that delivers more government.

"If Democrats sense that the first unified government in 48 years is trying to go full-speed ahead with an agenda that seems not to have been embraced enthusiastically by the electorate, I can imagine them getting ugly and ornery," said Mann, obviously worried about seeing David Bonoir (D-Mich.), Sheila Jackson Lee (D-Texas) and Jerrold Nadler (D-N.Y.) on the yack shows at the same time he's angling for administration jobs for his liberal friends. "It may make sense, if Bush is ultimately certified as the president, to think creatively about his Cabinet appointments, appointing some Democrats there."

"The next Congressional Budget Office forecast may project a surplus that is even larger than what we had in the campaign," prophesied Robert Litan, Brookings' vice president and its director of government studies. He stumped for a compromise based on the old "honor among thieves" code: "Money makes the world go round. And if in fact there's more money, there's room for a deal, where Republicans get some of theirs, Democrats get some of theirs, and you have a happy scenario worked out." Happy, I might add, for those in D.C. spending the money, not for those outside actually earning it and sending it to the feds.

"We can either have gridlock or bipartisanship," declared Isabel Sawhill, another Brookings fellow. She was charged with considering the election's implications for domestic policy, but her most interesting comments were a novel interpretation of the apparently total GOP victory. At the very moment the Republicans had managed to keep control of Congress and win the presidency, explained Sawhill, "the conservative revolution that many associate with Ronald Reagan, in both an ideological and intellectual sense, has lost a lot of earlier energy."

Her advice to Bush was to scrap his income tax cut—surprise!—and instead cut the payroll tax that funds Social Security (on condition that folks save the money). Such advice is Machiavellian to the max, since it would allow Sawhill, her colleagues at Brookings, and other liberals to attack Dubya for gutting the system, hence improving the electoral chances of Democrats in 2002.

Whatever. Maybe by then we'll at least know who the president is. In the meantime, I'm relaxing and enjoying these days without a federal budget or even a president-elect. Taxes aren't going up and there are no new programs in the offing. That may scare the hell out of the bleary-eyed folks at Brookings, but it's fine by me.

Or: Why we should learn to stop worrying and love genetically modified food

By Ronald Bailey

GELUNCH

Ten thousand people were killed and 10 to 15 million left homeless when a cyclone slammed into India's eastern coastal state of Orissa in October 1999. In the aftermath, CARE and the Catholic Relief Society distributed a high-nutrition mixture of corn and soy meal provided by the U.S. Agency for International Development to thousands of hungry storm victims. Oddly, this humanitarian act elicited cries of outrage.

"We call on the government of India and the state government of Orissa to immediately withdraw the corn-soya blend from distribution," said Vandana Shiva, director of the New Delhi–based Research Foundation for Science, Technology, and Ecology. "The U.S. has been using the Orissa victims as guinea pigs for GM [genetically modified] products which have been rejected by consumers in the North, especially Europe." Shiva's organization had sent a sample of the food to a lab in the U.S. for testing to see if it contained any of the genetically improved corn and soy bean varieties grown by tens of thousands of farmers in the United States. Not surprisingly, it did.

"Vandana Shiva would rather have her people in India starve than eat bioengineered food," says C.S. Prakash, a professor of plant molecular genetics at Tuskegee University in Alabama. Per Pinstrup-Andersen, director

KERRY P. TALBOTT

general of the International Food Policy Research Institute, observes: "To accuse the U.S. of sending genetically modified food to Orissa in order to use the people there as guinea pigs is not only wrong; it is stupid. Worse than rhetoric, it's false. After all, the U.S. doesn't need to use Indians as guinea pigs, since millions of Americans have been eating genetically modified food for years now with no ill effects."

Shiva not only opposes the food aid but is also against "golden rice," a crop that could prevent blindness in half a million to 3 million poor children a year and alleviate vitamin A deficiency in some 250 million people in the developing world. By inserting three genes, two from daffodils and one from a bacterium, scientists at the Swiss Federal Institute of Technology created a variety of rice that produces the nutrient beta-carotene, the precursor to vitamin A. Agronomists at the International Rice Research Institute in the Philippines plan to crossbreed the variety, called "golden rice" because of the color produced by the beta-carotene, with well-adapted local varieties and distribute the resulting plants to farmers all over the developing world.

Last June, at a Capitol Hill seminar on biotechnology sponsored by the Congressional Hunger Center, Shiva airily dismissed golden rice by claiming that "just in the state of Bengal 150 greens which are rich in vitamin A are eaten and grown by the women." A visibly angry Martina McGloughlin, director of the biotechnology program at the University of California at Davis, said "Dr. Shiva's response reminds me of... Marie Antoinette, [who] suggested the peasants eat cake if they didn't have access to bread." Alexander Avery of the Hudson Institute's Center for Global Food Issues noted that nutritionists at UNICEF doubted it was physically possible to get enough vitamin A from the greens Shiva was recommending. Furthermore, it seems unlikely that poor women living in shanties in the heart of Calcutta could grow greens to feed their children.

The apparent willingness of biotechnology's opponents to sacrifice people for their cause disturbs scientists who are trying to help the world's poor. At the annual meeting of the American Association for the Advancement of Science last February, Ismail Serageldin, the director of the Consultative Group on International Agricultural Research, posed a challenge: "I ask opponents of biotechnology, do you want 2 to 3 million children a year to go blind and 1 million to die of vitamin A deficiency, just because you object to the way golden rice was created?"

Vandana Shiva is not alone in her disdain for biotechnology's potential to help the poor. Mae-Wan Ho, a reader in biology at London's Open University who advises another activist group, the Third World Network, also opposes golden rice. And according to a *New York Times* report on a biotechnology meeting held last March by the Organization for Economic Cooperation and Development, Benedikt Haerlin, head of Greenpeace's European anti-biotech campaign, "dismissed the importance of saving African and Asian lives at the risk of spreading a new science that he considered untested."

Shiva, Ho, and Haerlin are leaders in a growing global war against crop biotechnology, sometimes called "green biotech" (to distinguish it from medical biotechnology, known as "red biotech"). Gangs of anti-biotech vandals with cute monikers such as Cropatistas and Seeds of Resistance have ripped up scores of research plots in Europe and the U.S. The so-called Earth Liberation Front burned down a crop biotech lab at Michigan State University on New Year's Eve in 1999, destroying years of work and causing $400,000 in property damage. (See "Crop Busters," January.) Anti-biotech lobbying groups have proliferated faster than bacteria in an agar-filled petri dish: In addition to Shiva's organization, the Third World Network, and Greenpeace, they include the Union of Concerned Scientists, the Institute for Agriculture and Trade Policy, the Institute of Science in Society, the Rural Advancement Foundation International, the Ralph Nader–founded Public Citizen, the Council for Responsible Genetics, the Institute for Food and Development Policy, and that venerable fount of biotech misinformation, Jeremy Rifkin's Foundation on Economic Trends. The left hasn't been this energized since the Vietnam War. But if the anti-biotech movement is successful, its victims will include the downtrodden people on whose behalf it claims to speak.

"We're in a war," said an activist at a protesters' gathering during the November 1999 World Trade Organization meeting in Seattle. "We're going to bury this first wave of biotech." He summed up the basic strategy pretty clearly: "The first battle is labeling. The second battle is banning it."

Later that week, during a standing-room-only "biosafety seminar" in the basement of a Seattle Methodist church, the ubiquitous Mae-Wan Ho declared, "This warfare against na-

"I ask opponents of biotechnology, do you
1 million to die of vitamin A deficiency, just because you

ture must end once and for all." Michael Fox, a vegetarian "bioethicist" from the Humane Society of the United States, sneered: "We are very clever little simians, aren't we? Manipulating the bases of life and thinking we're little gods." He added, "The only acceptable application of genetic engineering is to develop a genetically engineered form of birth control for our own species." This creepy declaration garnered rapturous applause from the assembled activists.

Despite its unattractive side, the global campaign against green biotech has had notable successes in recent years. Several leading food companies, including Gerber and Frito-Lay, have been cowed into declaring that they will not use genetically improved crops to make their products. Since 1997, the European Union has all but outlawed the growing and importing of biotech crops and food. Last May some 60 countries signed the Biosafety Protocol, which mandates special labels for biotech foods and requires strict notification, documentation, and risk assessment procedures for biotech crops. Activists have launched a "Five-Year Freeze" campaign that calls for a worldwide moratorium on planting genetically enhanced crops.

For a while, it looked like the United States might resist the growing hysteria, but in December 1999 the Environmental Protection Agency announced that it was reviewing its approvals of biotech corn crops, implying that it might ban the crops in the future. Last May the Food and Drug Administration, which until now has evaluated biotech foods solely on their objective characteristics, not on the basis of how they were produced, said it would formulate special rules for reviewing and approving products with genetically modified ingredients. U.S. Rep. Dennis Kucinich (D-Ohio) has introduced a bill that would require warning labels on all biotech foods.

In October, news that a genetically modified corn variety called StarLink that was approved only for animal feed had been inadvertently used in two brands of taco shells prompted recalls, front-page headlines, and anxious recriminations. Lost in the furor was the fact that there was little reason to believe the corn was unsafe for human consumption—only an implausible, unsubstantiated fear that it might cause allergic reactions. Even Aventis, the company which produced StarLink, agreed that it was a serious mistake to have accepted the EPA's approval for animal use only. Most proponents favor approving biotech crops only if they are determined to be safe for human consumption.

To decide whether the uproar over green biotech is justified, you need to know a bit about how it works. Biologists and crop breeders can now select a specific useful gene from one species and splice it into an unrelated species. Previously plant breeders were limited to introducing new genes through the time-consuming and inexact art of crossbreeding species that were fairly close relatives. For each cross, thousands of unwanted genes would be introduced into a crop species. Years of "backcrossing"—breeding each new generation of hybrids with the original commercial variety over several generations—were needed to eliminate these unwanted genes so that only the useful genes and characteristics remained. The new methods are far more precise and efficient. The plants they produce are variously described as "transgenic," "genetically modified," or "genetically engineered."

vant 2 to 3 million children a year to go blind and
bject to the way golden rice was created?"

Plant breeders using biotechnology have accomplished a great deal in only a few years. For example, they have created a class of highly successful insect-resistant crops by incorporating toxin genes from the soil bacterium *Bacillus thuringiensis.* Farmers have sprayed *B.t.* spores on crops as an effective insecticide for decades. Now, thanks to some clever biotechnology, breeders have produced varieties of corn, cotton, and potatoes that make their own insecticide. *B.t.* is toxic largely to destructive caterpillars such as the European corn borer and the cotton bollworm; it is not harmful to birds, fish, mammals, or people.

Another popular class of biotech crops incorporates an herbicide resistance gene, a technology that has been especially useful in soybeans. Farmers can spray herbicide on their fields to kill weeds without harming the crop plants. The most widely used herbicide is Monsanto's Roundup (glyphosate), which toxicologists regard as an environmentally benign chemical that degrades rapidly, days after being applied. Farmers who use "Roundup Ready" crops don't have to plow for weed control, which means there is far less soil erosion.

Biotech is the most rapidly adopted new farming technology in history. The first generation of biotech crops was approved by the EPA, the FDA, and the U.S. Department of Agriculture in 1995, and by 1999 transgenic varieties accounted for 33 percent of corn acreage, 50 percent of soybean acreage, and 55 percent of cotton acreage in the U.S. Worldwide, nearly

90 million acres of biotech crops were planted in 1999. With biotech corn, U.S. farmers have saved an estimated $200 million by avoiding extra cultivation and reducing insecticide spraying. U.S. cotton farmers have saved a similar amount and avoided spraying 2 million pounds of insecticides by switching to biotech varieties. Potato farmers, by one estimate, could avoid spraying nearly 3 million pounds of insecticides by adopting *B.t.* potatoes. Researchers estimate that *B.t.* corn has spared 33 million to 300 million bushels from voracious insects.

One scientific panel after another has concluded that biotech foods are safe to eat, and so has the FDA. Since 1995, tens of millions of Americans have been eating biotech crops. Today it is estimated that 60 percent of the foods on U.S. grocery shelves are produced using ingredients from transgenic crops. In April a National Research Council panel issued a report that emphasized it could not find "any evidence suggesting that foods on the market today are unsafe to eat as a result of genetic modification." *Transgenic Plants and World Agriculture*, a report issued in July that was prepared under the auspices of seven scientific academies in the U.S. and other countries, strongly endorsed crop biotechnology, especially for poor farmers in the developing world. "To date," the report concluded, "over 30 million hectares of transgenic crops have been grown and no human health problems associated specifically with the ingestion of transgenic crops or their products have been identified." Both reports concurred that genetic engineering poses no more risks to human health or to the natural environment than does conventional plant breeding.

As U.C.-Davis biologist Martina McGloughlin remarked at last June's Congressional Hunger Center seminar, the biotech foods "on our plates have been put through more thorough testing than conventional food ever has been subjected to." According to a report issued in April by the House Subcommittee on Basic Research, "No product of conventional plant breeding...could meet the data requirements imposed on biotechnology products by U.S. regulatory agencies....Yet, these foods are widely and properly regarded as safe and beneficial by plant developers, regulators, and consumers." The report concluded that biotech crops are "at least as safe [as] and probably safer" than conventionally bred crops.

In opposition to these scientific conclusions, Mae-Wan Ho points to a study by Arpad Pusztai, a researcher at Scotland's Rowett Research Institute, that was published in the British medical journal *The Lancet* in October 1999. Pusztai found that rats fed one type of genetically modified potatoes (not a variety created for commercial use) developed immune system disorders and organ damage. *The Lancet*'s editors, who published the study even though two of six reviewers rejected it, apparently were anxious to avoid the charge that they were muzzling a prominent biotech critic. But *The Lancet* also published a thorough critique, which concluded that Pusztai's experiments "were incomplete, included too few animals per diet group, and lacked controls such as a standard rodent diet. ...Therefore the results are difficult to interpret and do not allow the conclusion that the genetic modification of potatoes accounts for adverse effects in animals." The Rowett Institute, which does mainly nutritional research, fired Pusztai on the grounds that he had publicized his results before they had been peer reviewed.

Activists are also fond of noting that the seed company Pioneer Hi-Bred produced a soybean variety that incorporated a gene—for a protein from Brazil nuts—that causes reactions in people who are allergic to nuts. The activists fail to mention that the soybean never got close to commercial release because Pioneer Hi-Bred checked it for allergenicity as part of its regular safety testing and immediately dropped the variety. The other side of the allergy coin is that biotech can remove allergens that naturally occur in foods such as nuts, potatoes, and tomatoes, making these foods safer.

In April a National Research Council panel issue
suggesting that foods on the market today are unsafe t

Even if no hazards from genetically improved crops have been demonstrated, don't consumers have a right to know what they're eating? This seductive appeal to consumer rights has been a very effective public relations gambit for anti-biotech activists. If there's nothing wrong with biotech products, they ask, why don't seed companies, farmers, and food manufacturers agree to label them?

The activists are being more than a bit disingenuous here. Their scare tactics, including the use of ominous words such as *frankenfoods*, have created a climate in which many consumers would interpret labels on biotech products to mean that they were somehow more dangerous or less healthy than old-style foods. Biotech opponents hope labels would drive frightened consumers away from genetically modified foods and thus doom them. Then the activists could sit back and smugly declare that biotech products had failed the market test.

The biotech labeling campaign is a red herring anyway, because the U.S. Department of Agriculture plans to issue some 500 pages of regulations outlining what qualifies as "organic" foods by January, 2001. Among other things, the definition will require that organic foods not be produced using genetically modified crops. Thus consumers who want to avoid biotech products need only look for the "organic" label. Furthermore, there is no reason why conventional growers who believe they can sell more by avoiding genetically enhanced crops should not label their products accordingly, so long as they do not imply any health claims. The FDA has begun to solicit public comments on ways to label foods that are not genetically enhanced without implying that they are superior to biotech foods.

It is interesting to note that several crop varieties popular with organic growers were created through mutations deliberately induced by breeders using radiation or chemicals. This method of modifying plant genomes is obviously a far cruder and more imprecise way of creating new varieties. Radiation and chemical mutagenesis is like using a sledgehammer instead of the scalpel of biotechnology. Incidentally, the FDA doesn't review these crop varieties produced by radiation or chemicals for safety, yet no one has dropped dead from eating them.

Labeling nonbiotech foods as such will not satisfy the activists whose goal is to force farmers, grain companies, and food manufacturers to segregate biotech crops from conventional crops. Such segregation would require a great deal of duplication in infrastructure, including separate grain silos, rail cars, ships, and production lines at factories and mills. The StarLink corn problem is just a small taste of how costly and troublesome segregating conventional from biotech crops would be. Some analysts estimate that segregation would add 10 percent to 30 percent to the prices of food without any increase in safety. Activists are fervently hoping that mandatory crop segregation will also lead to novel legal nightmares: If a soybean shipment is inadvertently "contaminated" with biotech soybeans, who is liable? If biotech corn pollen falls on an organic cornfield, can the organic farmer sue the biotech farmer? Trial lawyers must be salivating over the possibilities.

The activists' "pro-consumer" arguments can be turned back on them. Why should the majority of consumers pay for expensive crop segregation that they don't want? It seems reasonable that if some consumers want to avoid biotech crops, they should pay a premium, including the costs of segregation.

As the labeling fight continues in the United States, antibiotech groups have achieved major successes elsewhere. The Biosafety Protocol negotiated last February in Montreal requires that all shipments of biotech crops, including grains and fresh foods, carry a label saying they "may contain living modified organisms." This international labeling requirement is clearly intended to force the segregation of conventional and biotech crops. The protocol was hailed by Greenpeace's Benedikt Haerlin as "a historic step towards protecting the environment and consumers from the dangers of genetic engineering."

Activists are demanding that the labeling provisions of the Biosafety Protocol be enforced immediately, even though the agreement says they don't apply until two years after the protocol takes effect. Vandana Shiva claims the food aid sent to Orissa after the October 1999 cyclone violated the Biosafety Protocol because it was unlabeled. Greenpeace cited the unratified Biosafety Protocol as a justification for stopping imports of American agricultural products into Brazil and Britain. "The recent agreement on the Biosafety Protocol in Montreal...means that governments can now refuse to accept imports of GM crops on the basis of the 'precautionary principle,'" said a February 2000 press release announcing that Greenpeace activists had boarded an American grain carrier delivering soybeans to Britain.

Under the "precautionary principle," regulators do not need to show scientifically that a biotech crop is unsafe before banning it; they need only assert that it has not been proved harmless. Enshrining the precautionary principle into international law is a major victory for biotech opponents. "They want to err on the side of caution not only when the evidence is not conclusive but when no evidence exists that would indicate harm is possible," observes Frances Smith, executive director of Consumer Alert.

Model biosafety legislation proposed by the Third World Network goes even further than the Biosafety Protocol, covering all biotech organisms and requiring authorization "for all activities and for all GMOs [genetically modified organisms] and derived products." Under the model legislation, "the absence of scientific evidence or certainty does not preclude the decision makers from denying approval of the introduction of the GMO or derived products." Worse, under the model regu-

report that emphasized it **could not find "any evidence**

at as a result of genetic modification."

lations "any adverse socio-economic effects must also be considered." If this provision is adopted, it would give traditional producers a veto over innovative competitors, the moral equivalent of letting candlemakers prevent the introduction of electric lighting.

Concerns about competition are one reason European governments have been so quick to oppose crop biotechnology. "EU countries, with their heavily subsidized farming, view foreign agribusinesses as a competitive threat," Frances Smith writes. "With heavy subsidies and price supports, EU farmers see no need to improve productivity." In fact, biotech-boosted European agricultural productivity would be a fiscal disaster for the E.U., since it would increase already astronomical subsidy payments to European farmers.

The global campaign against green biotech received a public relations windfall on May 20, 1999, when *Nature* published a study by Cornell University researcher John Losey that found that Monarch butterfly caterpillars died when force-fed milkweed dusted with pollen from *B.t.* corn. Since then, at every anti-biotech demonstration, the public has been treated to flocks of activist women dressed fetchingly as Monarch butterflies. But when more-realistic field studies were conducted, researchers found that the alleged danger to Monarch caterpillars had been greatly exaggerated. Corn pollen is heavy and doesn't spread very far, and milkweed grows in many places aside from the margins of cornfields. In the wild, Monarch caterpillars apparently know better than to eat corn pollen on milkweed leaves.

Furthermore, *B.t.* crops mean that farmers don't have to indiscriminately spray their fields with insecticides, which kill beneficial as well as harmful insects. In fact, studies show that *B.t.* cornfields harbor higher numbers of beneficial insects such as lacewings and ladybugs than do conventional cornfields. James Cook, a biologist at Washington State University, points out that the population of Monarch butterflies has been increasing in recent years, precisely the time period in which *B.t.* corn has been widely planted. The fact is that pest-resistant crops are harmful mainly to target species—that is, exactly those insects that insist on eating them.

Never mind; we will see Monarchs on parade for a long time to come. Meanwhile, a spooked EPA has changed its rules governing the planting of *B.t.* corn, requiring farmers to plant non-*B.t.* corn near the borders of their fields so that *B.t.* pollen doesn't fall on any milkweed growing there. But even the EPA firmly rejects activist claims about the alleged harms caused by *B.t.* crops. "Prior to registration of the first *B.t.* plant pesticides in 1995," it said in response to a Greenpeace lawsuit, "EPA evaluated studies of potential effects on a wide variety of non-target organisms that might be exposed to the *B.t.* toxin, e.g., birds, fish, honeybees, ladybugs, lacewings, and earthworms. EPA concluded that these species were not harmed."

Another danger highlighted by anti-biotech activists is the possibility that transgenic crops will crossbreed with other plants. At the Congressional Hunger Center seminar, Mae-Wan Ho claimed that "GM-constructs are designed to invade genomes and to overcome natural species barriers." And that's not all. "Because of their highly mixed origins," she added, "GM-constructs tend to be unstable as well as invasive, and may be more likely to spread by horizontal gene transfer."

As one tracks the war against biotech, it become primarily concerned about safety. What the

"Nonsense," says Tuskegee University biologist C.S. Prakash. "There is no scientific evidence at all for Ho's claims." Prakash points out that plant breeders specifically choose transgenic varieties that are highly stable since they want the genes that they've gone to the trouble and expense of introducing into a crop to stay there and do their work.

Ho also suggests that "GM genetic material" when eaten is far more likely to be taken up by human cells and bacteria than is "natural genetic material." Again, there is no scientific evidence for this claim. All genes from whatever source are made up of the same four DNA bases, and all undergo digestive degradation when eaten.

Biotech opponents also sketch scenarios in which transgenic crops foster superpests: weeds bolstered by transgenes for herbicide resistance or pesticide-proof bugs that proliferate in response to crops with enhanced chemical defenses. As McGloughlin notes, "The risk of gene flow is not specific to biotechnology. It applies equally well to herbicide resistant plants that have been developed through traditional breeding techniques." Even if an herbicide resistance gene did get into a weed species, most researchers agree that it would be unlikely to persist unless the weed were subjected to significant and continuing selection pressure—that is, sprayed regularly with a specific herbicide. And if a weed becomes resistant to one herbicide, it can be killed by another.

As for encouraging the evolution of pesticide-resistant in-

sects, that already occurs with conventional spray pesticides. There is no scientific reason for singling out biotech plants. Cook, the Washington State University biologist, points out that crop scientists could handle growing pesticide resistance the same way they deal with resistance to infectious rusts in grains: Using conventional breeding techniques, they stack genes for resistance to a wide variety of evolving rusts. Similarly, he says, "it will be possible to deploy different *B.t.* genes or stack genes and thereby stay ahead of the ever-evolving pest populations."

The environmentalist case against biotech crops includes a lot of innuendo. "After GM sugar beet was harvested," Ho claimed at the Congressional Hunger Center seminar, "the GM genetic material persisted in the soil for at least two years and was taken up by soil bacteria." Recall that the *Bacillus thuringiensis* is a *soil bacterium*—its habitat is the soil. Organic farmers broadcast *B.t.* spores freely over their fields, hitting both target and nontarget species. If organic farms were tested, it's likely that *B.t.* residues would be found there as well; they apparently have not had any ill effects. Even the EPA has conceded, in its response to Greenpeace's lawsuit, that "there are no reports of any detrimental effects on the soil ecosystems from the use of *B.t.* crops."

Given their concerns about the spread of transgenes, you might think biotech opponents would welcome innovations designed to keep them confined. Yet they became apoplectic when Delta Pine Land Co. and the U.S. Department of Agriculture announced the development of the Technology Protection System, a complex of three genes that makes seeds sterile by interfering with the development of plant embryos. TPS also gives biotech developers a way to protect their intellectual property: Since farmers couldn't save seeds for replanting, they would have to buy new seeds each year.

Because high-yielding hybrid seeds don't breed true, corn growers in the U.S. and Western Europe have been buying seed annually for decades. Thus TPS seeds wouldn't represent a big change in the way many American and European farmers do business. If farmers didn't want the advantages offered in the enhanced crops protected by TPS, they would be free to buy seeds without TPS. Similarly, seed companies could offer crops with transgenic traits that would be expressed only in the presence of chemical activators that farmers could choose to buy if they thought they were worth the extra money. Ultimately, the market would decide whether these innovations were valuable.

If anti-biotech activists really are concerned about gene flow, they should welcome such technologies. The pollen from crop plants incorporating TPS would create sterile seeds in any weed that it happened to crossbreed with, so that genes for traits such as herbicide resistance or drought tolerance couldn't be passed on.

This point escapes some biotech opponents. "The possibility that [TPS] may spread to surrounding food crops or to the natural environment is a serious one," writes Vandana Shiva in her recent book *Stolen Harvest.* "The gradual spread of sterility in seeding plants would result in a global catastrophe that could eventually wipe out higher life forms, including humans, from the planet." This dire scenario is not just implausible but biologically impossible: *TPS is a gene technology that causes sterility; that means, by definition, that it can't spread.*

ver clearer that its leaders are not

ally **hate is capitalism and globalization.**

Despite the clear advantages that TPS offers in preventing the gene flow that activists claim to be worried about, the Rural Advancement Foundation International quickly demonized TPS by dubbing it "Terminator Technology." RAFI warned that "if the Terminator Technology is widely utilized, it will give the multinational seed and agrochemical industry an unprecedented and extremely dangerous capacity to control the world's food supply." In 1998 farmers in the southern Indian state of Karnataka, urged on by Shiva and company, ripped up experimental plots of biotech crops owned by Monsanto in the mistaken belief that they were TPS plants. The protests prompted the Indian government to declare that it would not allow TPS crops to enter the country. That same year, 20 African countries declared their opposition to TPS at a U.N. Food and Agriculture Organization meeting. In the face of these protests, Monsanto, which had acquired the technology when it bought Delta Pine Land Co., declared that it would not develop TPS.

Even so, researchers have developed another clever technique to prevent transgenes from getting into weeds through crossbreeding. Chloroplasts (the little factories in plant cells that use sunlight to produce energy) have their own small sets of genes. Researchers can introduce the desired genes into chloroplasts instead of into cell nuclei where the majority of

a plant's genes reside. The trick is that the pollen in most crop plants don't have chloroplasts, therefore it is impossible for a transgene confined to chloroplasts to be transferred through crossbreeding.

As one tracks the war against green biotech, it becomes ever clearer that its leaders are not primarily concerned about safety. What they really hate is capitalism and globalization. "It is not inevitable that corporations will control our lives and rule the world," writes Shiva in *Stolen Harvest.* In *Genetic Engineering: Dream or Nightmare?* (1999), Ho warns, "Genetic engineering biotechnology is an unprecedented intimate alliance between bad science and big business which will spell the end of humanity as we know it, and the world at large." The first nefarious step, according to Ho, will occur when the "food giants of the North" gain "control of the food supply of the South through exclusive rights to genetically engineered seeds."

Accordingly, anti-biotech activists oppose genetic patents. Greenpeace is running a "No Patents on Life" campaign that appeals to inchoate notions about the sacredness of life. Knowing that no patents means no investment, biotech opponents declare that corporations should not be able to "own" genes, since they are created by nature.

The exact rules for patenting biotechnology are still being worked out by international negotiators and the U.S. Patent and Trademark Office. But without getting into the arcane details, the fact is that discoverers and inventors don't "own" genes. A patent is a license granted for a limited time to encourage inventors and discoverers to disclose publicly their methods and findings. In exchange for disclosure, they get the right to exploit their discoveries for 20 years, after which anyone may use the knowledge and techniques they have produced. Patents aim to encourage an open system of technical knowledge.

"Biopiracy" is another charge that activists level at biotech seed companies. After prospecting for useful genes in indigenous crop varieties from developing countries, says Shiva, companies want to sell seeds incorporating those genes back to poor farmers. Never mind that the useful genes are stuck in inferior crop varieties, which means that poor farmers have no way of optimizing their benefits. Seed companies liberate the useful genes and put them into high-yielding varieties that can boost poor farmers' productivity.

Amusingly, the same woman who inveighs against "biopiracy" proudly claimed at the Congressional Hunger Center seminar that 160 varieties of kidney beans are grown in India. Shiva is obviously unaware that farmers in India are themselves "biopirates." Kidney beans were domesticated by the Aztecs and Incas in the Americas and brought to the Old World via the Spanish explorers. In response to Shiva, C.S. Prakash pointed out that very few of the crops grown in India today are indigenous. "Wheat, peanuts, and apples and everything else—the chiles that the Indians are so proud of," he noted, "came from outside. I say, thank God for the biopirates." Prakash condemned Shiva's efforts to create "a xenophobic type of mentality within our culture" based on the fear that "everybody is stealing all of our genetic material."

If the activists are successful in their war against green biotech, it's the world's poor who will suffer most. The International Food Policy Research Institute estimates that global food production must increase by 40 percent in the next 20 years to meet the goal of a better and more varied diet for a world population of some 8 billion people. As biologist Richard Flavell concluded in a 1999 report to the IFPRI, "It would be unethical to condemn future generations to hunger by refusing to develop and apply a technology that can build on what our forefathers provided and can help produce adequate food for a world with almost 2 billion more people by 2020."

One way biotech crops can help poor farmers grow more food is by controlling parasitic weeds, an enormous problem in tropical countries. Cultivation cannot get rid of them, and farmers must abandon fields infested with them after a few growing seasons. Herbicide-resistant crops, which would make it possible to kill the weeds without damaging the cultivated plants, would be a great boon to such farmers.

By incorporating genes for proteins from viruses and bacteria, crops can be immunized against infectious diseases. The papaya mosaic virus had wiped out papaya farmers in Hawaii, but a new biotech variety of papaya incorporating a protein from the virus is immune to the disease. As a result, Hawaiian papaya orchards are producing again, and the virus-resistant variety is being made available to developing countries. Similarly, scientists at the Donald Danforth Plant Science Center in St. Louis are at work on a cassava variety that is immune to cassava mosaic virus, which killed half of Africa's

If the activists are successful in their war against biotech

must increase by 40 percent in the next 20 years to provid

cassava crop two years ago.

Another recent advance with enormous potential is the development of biotech crops that can thrive in acidic soils, a large proportion of which are located in the tropics. Aluminum toxicity in acidic soils reduces crop productivity by as much as 80 percent. Progress is even being made toward the Holy Grail of plant breeding, transferring the ability to fix nitrogen from legumes to grains. That achievement would greatly reduce the need for fertilizer. Biotech crops with genes for drought and salinity tolerance are also being developed. Further down the road, biologist Martina McGloughlin predicts, "we will be able to enhance other characteristics, such as growing seasons, stress tolerance, yields, geographic distribution, disease resistance, [and] shelf life."

Biotech crops can provide medicine as well as food. Biologists at the Boyce Thompson Institute for Plant Research at Cornell University recently reported success in preliminary tests with biotech potatoes that would immunize people against diseases. One protects against Norwalk virus, which causes diarrhea, and another might protect against the hepatitis B virus which afflicts 2 billion people. Plant-based vaccines would be especially useful for poor countries, which could manufacture and distribute medicines simply by having local farmers grow them.

Shiva and Ho rightly point to the inequities found in developing countries. They make the valid point that there is enough food today to provide an adequate diet for everyone if it were more equally distributed. They advocate land reform and microcredit to help poor farmers, improved infrastructure so farmers can get their crops to market, and an end to agricultural subsidies in rich countries that undercut the prices that poor farmers can demand.

Addressing these issues is important, but they are not arguments against green biotech. McGloughlin agrees that "the real issue is inequity in food distribution. Politics, culture, regional conflicts all contribute to the problem. Biotechnology isn't going to be a panacea for all the world's ills, but it can go a long way toward addressing the issues of inadequate nutrition and crop losses." Kenyan biologist Florence Wambugu argues that crop biotechnology has great potential to increase agricultural productivity in Africa without demanding big changes in local practices: A drought-tolerant seed will benefit farmers whether they live in Kansas or Kenya.

Yet opponents of crop biotechnology can't stand the fact that it will help developed countries first. New technologies, whether reaping machines in the 19th century or computers today, are always adopted by the rich before they become available to the poor. The fastest way to get a new technology to poor people is to speed up the product cycle so the technology can spread quickly. Slowing it down only means the poor will have to wait longer. If biotech crops catch on in the developed countries, the techniques to make them will become available throughout the world, and more researchers and companies will offer crops that appeal to farmers in developing countries.

Activists like Shiva subscribe to the candlemaker fallacy: If people begin to use electric lights, the candlemakers will go out of business, and they and their families will starve. This is a supremely condescending view of poor people. In order not to exacerbate inequality, Shiva and her allies want to stop technological progress. They romanticize the backbreaking lives that hundreds of millions of people are forced to live as they eke out a meager living off the land.

Per Pinstrup-Andersen of the International Food Policy Research Institute asked participants in the Congressional Hunger Center seminar to think about biotechnology from the perspective of people in developing countries: "We need to talk about the low-income farmer in West Africa who, on half an acre, maybe an acre of land, is trying to feed her five children in the face of recurrent droughts, recurrent insect attacks, recurrent plant diseases. For her, losing a crop may mean losing a child. Now, how can we sit here debating whether she should have access to a drought-tolerant crop variety? None of us at this table or in this room [has] the ethical right to force a particular technology upon anybody, but neither do we have the ethical right to block access to it. The poor farmer in West Africa doesn't have any time for philosophical arguments as to whether it should be organic farming or fertilizers or GM food. She is trying to feed her children. Let's help her by giving her access to all of the options. Let's make the choices available to the people who have to take the consequences." ◆

Ronald Bailey (rbailey@reason.com) is REASON*'s science correspondent.*

he world's **poor will suffer most.** Global food production
a better diet for a population of some 8 billion people.

AMERICA'S MOST DANGEROUS POLITICIAN

New Mexico Gov. Gary Johnson speaks out on taxes, school vouchers, and drug policy.

Interviewed by Michael W. Lynch

I've been in New Mexico less than 10 minutes when I realize that no ordinary politician rules the Land of Enchantment. After the young woman working the rental car counter discovers I need wheels to visit her very own governor, she starts talking excitedly and positively about his efforts to pass a school choice bill. One of her co-workers, a Democratic activist, tries to straighten her out, and the conversation soon grows to include other employees, all of whom are surprisingly well-informed due to the governor's high-profile efforts to pass a statewide voucher program. The Democrat wants to make something else clear about New Mexico's top pol: She doesn't appreciate his crusade for drug legalization. Struggling to come up with the worst possible epithet, she finally spits out, "I think he's a *liberal*," adding that as one he embarrasses her state. (Such is the New West that even Democrats think of liberals as lower than rattlesnakes.)

PHOTOS: EMILY MEDVEC

New Mexico Gov. Gary Johnson is many things—a successful businessman, a two-term governor, an Iron Man triathlete, an aspiring conqueror of Mt. Everest. He's hardly a liberal, though, unless one uses the term in its original sense of someone who believes that a minimal state is best suited for a free people. Even then, the term doesn't fully do justice to this energetic man. When pressed on his vision of the state's role, the 47-year-old Johnson speaks of "ensuring a level playing field and [making certain] that liberties and freedoms are equally available to all." He argues that the government only "needs to ensure that no one is harmful to anyone else."

To be sure, Johnson's limited-government iconoclasm is more that of an accountant—or a motivational speaker—than that of a philosopher-king. When I first ask him to explain his overarching governing philosophy, he pulls from his wallet a card containing his seven—count 'em—principles of good government, which seem to be culled equally from Ben Franklin and Tony Robbins. Number 1: Become reality driven. Number 2: Always be honest and tell the truth. Number 7: Be willing to do whatever it takes to get the job done.

"My overriding philosophy is the common-sense business approach to state government, period," says Johnson. "Best product, best service, lowest price." On issues ranging from health care for the poor to road construction to drug prohibition to education, he's convinced you get the best product at the lowest cost when private enterprise injects competition into the process.

This practical approach drives his notorious attitude toward drug prohibition, which Johnson has attacked more forcefully and visibly than any other elected official in America today. He rails against the drug war mostly, though not exclusively, on the grounds that it is inefficient. In general, he is more interested in pragmatic concerns than in defending anything as abstract as inalienable rights. When I bring up prostitution, another consensual crime, he endorses decriminalization, but not on the grounds that people own their bodies or that it's not the state's business. Instead he frames his response this way: "Given that prostitution takes place, the question is, 'Are you safer engaging a prostitute in Nevada or New Mexico?' I think you are clearly safer engaging one in Nevada in a licensed prostitution establishment."

Such unorthodox positions and the willingness to discuss them openly reflect the unlikely path Johnson traveled before acquiring political power. Most successful pols spend their salad days engaged in political hackery, always making sure their "future political viability" is kept safe from harm. Johnson was on another plan altogether: He spent years smoking dope a couple times a week, competing vigorously in athletics, and then, with his wife of 24 years, building a construction business called Big J Construction. (Though the rental car workers suggested the name referred to his pot smoking days, the governor denies it stems from anything but the first letter of his last name.) In the mid-1990s, Johnson decided it was time to dabble in public service, and he approached the state Republican Party about running for the top statewide office. The Republicans were polite but dismissive, telling him that as an unknown businessman he couldn't win. He thought otherwise, and he spent $500,000 of his own money to saturate the state with his message of a "common-sense business approach to politics." When the ballots were tallied in 1994, he'd won with 50 percent of the vote in a three-way race. He increased his share of the vote in 1998 by 5 percent, making him the first governor in New Mexico history to be elected to two consecutive four-year terms.

I talked with Johnson in his Santa Fe office for about an hour in mid-August. We spoke of his accomplishments: no tax increases in six years, a major road building program, shifting Medicaid to managed care, constructing two new private prisons, canning 1,200 state employees, and vetoing a record number of bills. Says Johnson, "Every time you pass a law it is a little bite out of freedom." But we spent the majority of time focusing on the two issues that have put the governor in the national spotlight—issues on which he hasn't achieved anything close to success: drug legalization and school choice.

Reason: Most politicians who admit to using drugs explain it in terms of a redemption narrative: "I did it, I ought not have done it, and no one else should do it." You tell a different story.

Gary Johnson: Like a lot of other people, I've smoked marijuana. It is what goes on in this country. At the time [the early 1970s], I thought it was a mind-expanding experience, just like a lot of kids and a lot of adults do. Most people who smoke marijuana do it in a way similar to having

cocktails in the evening.

I don't smoke marijuana anymore. I don't drink. Marijuana is a handicap. So is alcohol. Alcohol is a terrible handicap. But in spite of being a handicap, it shouldn't be criminal. At one point in this country's history, alcohol was criminal. I think it's a bad choice. But in no way should you end up in jail for doing that.

You should end up in jail for drinking and driving, drinking and doing crime, drinking and doing harm, just like you should end up in jail if you are going to smoke marijuana and drive, just like if you are going to smoke marijuana and do crime. Those are the lines that we need to draw.

Reason: What prompted you to be so honest about your past drug use?

Johnson: I personally reacted to President Clinton's statement that he didn't inhale. Come on! I needed to be honest about this, so it was something that I volunteered.

Reason: You say drugs are a handicap and people shouldn't do them. But you also say that the most people who use drugs do so responsibly. So are they really a handicap? People could relax at a party by taking a hit off a joint rather than drinking to excess. Why is that a handicap and not a life-enhancing experience?

Johnson: Clearly, it is a handicap. You are slowed down in your reactions. You are not as quick mentally, and you are not as quick physically. [Then again], as stoned as I have ever been on marijuana, the impairment does not compare to being drunk.

Reason: Aren't there times when being "slowed down" can be both appropriate and fun—like when you're watching a Cheech & Chong movie or *Austin Powers*?

Johnson: It is a handicap because you are not being as productive as you could be. I'm speaking for myself, but why are you watching Cheech & Chong in the first place? Why aren't you out riding a bicycle? Why aren't you reading a book? It's much harder to concentrate on a book after having smoked marijuana.

Reason: If it was a handicap, why did you keep doing it?

Johnson: Because it was fun. At the time I was doing it, it was not a handicap. I only came to that conclusion later. There was one particular incident where it really hit home. That's when I quit being a chronic marijuana smoker.

I was out of college and pursuing a career as a professional skier. I remember setting up gates one morning at the Schweitzer ski basin in Idaho and running through the gates and checking my times. My first run was 16 seconds. My next run was 15.25 seconds. I went down again, this time in 14.5 seconds. On the lift back up the mountain, I was riding with a ski patroller who pulled out a joint. We got high and then got to the top of the course. I really smoked the next run—I figured I went through that course faster than ever before! You know what I mean. This was going to be a 13, I was thinking. Yet it took me 18 seconds. I had thought I was that much faster but I was that much slower. It was just one of those big gongs going off in your head: Wow, this is not what I thought it was. Wait a minute!

"I'VE SMOKED MARIJUANA. I THOUGHT IT WAS A MIND-EXPANDING EXPERIENCE, JUST LIKE A LOT OF KIDS AND A LOT OF ADULTS DO."

Reason: But was that run fun?

Johnson: Oh yeah. But was it faster? You've got to remember what my goal was. My goal was to be a professional racer.

Reason: You've obviously been a big success. How about your buddies that you smoked pot with in high school and college? Have most of them been successful?

Johnson: Yes.

Reason: Gone on to sort of normal lives....

Johnson: Every one of 'em. (Laughs.)

Reason: No one in jail?

Johnson: I do have acquaintances, like we all do, who have overdosed and others who aren't successful. But my core group, my real close buddies, have all grown up to be successful men and women.

Reason: You've said that it's an absolute political taboo for a presidential candidate today to talk about legalizing marijuana. If, as you say, 75 percent of people don't think it should be criminal, why is it such a taboo topic?

Johnson: I don't have the answer. When you ask people, "How many in this room believe that smoking marijuana within the confines of your own home, doing no harm to anybody except arguably yourself, how many think someone belongs in jail for that?," 90 percent of the room raises their hand to say no, people shouldn't go to jail for that.

Then you ask how many believe people should go to jail for selling marijuana. Eighty percent of the room believes people should go to jail for *selling* marijuana. That's the disconnect. People think it's OK to do it as long as you are not doing any harm to anyone, but it's not OK to sell it. But how are you going to get it? They don't understand who the pusher is. The pusher is just a user who sells a little bit based on their own habit. Nobody is going to the police department and saying, "This person sold me drugs, and I want them arrested." Everybody is getting arrested because they sold to an undercover agent.

Reason: If you feel that smoking pot—or even selling it—does not make a person a criminal, why not pardon people in New Mexico who are doing time for simple possession?

Johnson: It's complex. Nobody is in jail on the basis of use. They are in jail on the basis of possession of large amounts of drugs that qualify as trafficking. They are in jail for selling drugs. And it is often attached to property crime. That is where I do draw a line. I have a chance here to change the law. I think that it is OK to launch the discussion and have the debate. But I don't think it's right to take it upon myself to pardon convicted criminals based on laws that the population has supported by electing the people that they have elected.

Reason: What about other drugs? I know your model for heroin is similar to the Swiss model.

Johnson: Let's think about a model that could exist in this country. You are an addict. So maybe you could go to a heroin maintenance program where you could get a prescription for heroin from a doctor. When you went to get your heroin you would have to go to a clinic and actually ingest the heroin at the clinic. I bet it would cost one-tenth of what it costs out on the street. You wouldn't have AIDS or Hepatitis C, since you wouldn't use dirty needles. You are not going to have an overdose because the quantity and the impurities are not going to kill you. Since it's so much cheaper than what's on the street, you wouldn't have to engage in crime to pay for it. You wouldn't have the motivation to recruit other heroin addicts to pay for your own habit.

I think this would be a better situation than what is happening today. There are tens of thousands of heroin addicts with one thing on their mind: Where are they going to get their next fix, and how are they going to pay for it? You and I pay for that every single day.

Reason: What about other drugs that are more popular than heroin? Cocaine, say?

Johnson: I don't have an answer when it comes to cocaine. I've always said that. I am not advocating the legalization of cocaine. I don't know how you do that.

Reason: Isn't the parallel to alcohol the same with coke as it is with pot?

Johnson: I'm trying to be reality-based in this. Start off talking about marijuana, start off talking about harm reduction strategies, and start off talking about how to move away from making a cocaine user a criminal. I believe that if you made all drugs legal, just made them over-the-counter—which I'm not advocating—it would be a better situation than we have today. A much better situation than we have today. But I'm not advocating that.

Reason: As you've said elsewhere, this issue is a political zero—it doesn't make you popular or win you votes. So why is it worth your energy?

Johnson: I made a pledge to myself that I am not going to get out of office thinking, "Coulda, shoulda, woulda." This is definitely one of those issues that would be easy not to address because to say anything contrary to the status quo is political suicide. I had my eyes open when I went into this.

Reason: What has been the reaction from other politicians here in New Mexico and elsewhere?

Johnson: The responses in this office—the calls, faxes, letters, e-mails, people coming up to me on the street—is about 95 percent positive. The response from elected officials and those in law enforcement—and I am not talking about the guys on the street: I'm talking about those in charge—has been about 100 percent negative. However, I have been approached

by many elected officials who say, "Way to go. This needs to be said. Your position is right. But you are not going to hear that from me in public."

Reason: Why won't other elected officials speak out?

Johnson: Politics is a herd mentality. Politicians don't really lead. Politicians reflect what they think is consensus opinion.

I see drug policy changing. No question—no *if*s, *and*s, or *but*s. In the early 1970s, all my friends and I looked around and thought that the law would get changed. Of course, we were smoking marijuana, and we knew that it was illegal, we knew that it was criminal, and we knew that it shouldn't be criminal. But the law hasn't been changed.

Reason: Is that partly because drug laws don't cause much pain to people who can change them? When Al Gore's son gets caught smoking pot at prep school, he doesn't get arrested, he doesn't go to jail, he doesn't even wind up in the newspaper because his daddy makes a few calls.

Johnson: Class plays a role. But I also know people who smoke pot regularly but don't think that marijuana should be legalized. They say, "I smoke marijuana, but you know what? I am in control, I can afford this, and I am not going to get caught if I'm careful."

Reason: What do you hope to achieve by putting forward this issue of drug legalization as you have?

Johnson: That we might actually move the needle in the right direction. Any movement at all in the needle is significant, given the depth of the problem. Any movement at all that reduces disease, that reduces overdoses, that reduces property crime, that reduces violent crime is good.

I'm a cost-benefit analysis person: What are we spending and what are we getting? My premise is the war in drugs is a miserable failure. I don't know of a bigger problem in every single state, or a bigger expense that might actually have alternative solutions. Drugs account for half of law enforcement spending, half of prison spending, half of court spending. What are we getting for it? We are arresting 1.6 million people a year in this country on drug-related charges, and it's a failure.

Reason: Let's talk about another controversial program that you have been pushing hard: school vouchers. What is your program, how have you been selling it, and what audience has been the most receptive?

Johnson: What I've proposed is that every single K–12 student in the state of New Mexico, all 300,000 of them, get a voucher to attend whatever school they want. The value of the voucher would be about $3,500. That's my proposal.

I have taken this on the stump, and I will continue to take it on the stump for the next two and a half years. I have talked to any group that will ask me to come talk about vouchers. Same, by the way, when it comes to drugs. So I think New Mexico is getting better and better educated on vouchers. After a couple of years on this issue, the needle has moved. No question about it, the needle has moved! Has it gone far enough? No. All you can do is keep going, going, going.

Reason: Why is it so hard to get vouchers passed?

Johnson: The biggest criticism is that it will take money away from public schools, that it will destroy the public school system. My plan would actually increase the per capita funding for kids who remain in public schools.

We are actually spending about $5,500 dollars per child, and each public school district would get the $2,000 differential for each student who opted out. The example I use is this: Say that every student in Santa Fe were to opt out of public schools, which isn't possible and is not going to happen. But if it did, Santa Fe public schools would be left with about 40 percent of their budget and no students. Tell me how that takes away from public education.

Reason: How do your opponents deal with that?

Johnson: I don't think they do. It's one of those pins in the balloon. Go down the list of the main criticisms: Vouchers

"SCHOOL VOUCHERS ARE FOR THE POOR, WHO LIVE IN THE WORST NEIGHBORHOODS, GO TO THE WORST SCHOOLS, AND CAN'T GET AWAY FROM THEM."

only favor the rich. Baloney! People with money live in good neighborhoods that have good schools. Give me a break. Vouchers are for the poor. Vouchers are for those that don't have money, who live in the worst neighborhoods, go to the worst schools, and can't get away from them.

Keep going down the list: Vouchers are unconstitutional because you're giving money to private schools. No. If you want to start calling vouchers unconstitutional, then every single state has got a lot of unconstitutional programs. We give low-income parents money so they can go take their child to child care. We don't tell them where to take their child. The examples go on and on. You can just go on and on with the criticisms and the rebuttals of the criticisms.

Reason: Why are vouchers important? Why not just fix the public schools?

Johnson: Since I have been governor, K–12 educational spending has gone from $1.1 billion a year to $1.6 billion a year. By all measurements, students are doing just a little bit worse from year to year. For all that money, shouldn't we be doing just a little bit better? All I suggest is to make K–12 like higher education. Higher education in the United States is the best in the world because these institutions compete with each other for your tuition dollar. Let's just bring competition to public education. This is not about getting rid of public education; it is about providing alternatives that public schools very, very quickly will react to. Public schools will get better if they are subject to competition.

Reason: What role do charter schools play in injecting competition into the system?

Johnson: This last year we passed a comprehensive charter schools act. Great! This is a way for public schools to become better. Add vouchers. Give every single student in the state of New Mexico a voucher, and charter schools will become the vehicle by which public schools compete. Pass vouchers, and every single school will become a charter school overnight.

Reason: What do you consider your major accomplishments as governor of New Mexico?

Johnson: Building 500 miles of four-lane highway in the state. We have reduced taxes by about $123 million annually. More significantly, before my taking office there was never a set of six years in the state of New Mexico where not a single tax had gone up. We reformed Medicaid and got Medicaid costs under control. We built a couple of new, private prisons in New Mexico. We had prisoners housed out of state, and the federal court system had been running prisons in New Mexico under a consent decree since 1980. We are now out from under that consent decree. We have approximately 1,200 fewer employees in state government today than we did when I took office.

Reason: What's the thinking behind your road building programs? Traditionally those are often pork projects.

Johnson: Economic growth occurs only if you are connected with a four-lane highway. A lot of New Mexico is rural, and building 500 miles of four-lane highway is going to make a huge economic difference to all those communities. Basically, now we have connected every town in New Mexico with 30,000 people.

To save money, we looked at private alternatives in building the roads. The highway project on Highway 44, which is Albuquerque to Farmington, is designed, financed, built, and guaranteed by a private company. This is completely unique. We are actually the first state in the United States to adopt an innovative financing program for Highway 44, by bonding federal revenues. As a result, other states are copying it, and Wall Street is embracing it.

Reason: Private prisons. Why did you build them, and how did you get them through the legislature?

Johnson: First off, let's go with an assumption. It doesn't have to be private prisons. It can be private roads being built, it can be private schools, it can be anything. If you are getting better goods and services and it is the same price, you go with the same price, better goods and services. If what you are getting is the same goods and services but you are paying significantly less, than you go with paying significantly less. That is the situation with private prisons in New Mexico. We are getting the same product as we have always had—I would argue we are getting a better product—and we are getting it for significantly less. That's good government.

Reason: How were you able to get this through the legislature?

Johnson: We weren't. This was something that we accomplished administratively. There was absolutely no cooperation whatsoever to get these things built.

Reason: You've said that you have always believed that life's highest calling is to do good by others, and that politics is a way of accomplishing that. But you have spent most of your life doing good by others in the private sector. I consider building a company and providing goods and services doing good by others. Have you been able to do more good by others as a politician than as a private citizen?

Johnson: No question. Being governor of a state gives you enormous ability to do just that. I think we have moved the needle in the right direction. I'll be honest with you about where I think we have moved the needle the least. It's probably in the welfare reform areas, in getting a handle on child support. I don't think I have done anything to move the needle on education in New Mexico other than funding by about $500 million more.

Reason: How about tax cuts? Did you get the tax cuts you wanted to see?

Johnson: No. I cut taxes to the tune of about $123 million on an annual basis. [New Mexico's budget will be $3.5 billion in fiscal year 2001.] But any citizen in the state would be hard pressed to tell you what any of those were. Every single year, I have advocated significant income tax reduction, and I will continue to do so. It's significant that we've had no tax increases in New Mexico since I've been governor. It has never happened before. But we haven't had the cuts I've wanted either.

Reason: Your term's up January 1, 2003. What's next for you? More politics?

Johnson: No politics in my future. I have effectively pulled the pin on my political career with my stance on drugs, and I recognize that up front.

The First Amendment vs. freedom of speech • By Cathy Young

The latest round in the perennial legal battle over the separation of church and state ended on June 19, when the U.S. Supreme Court struck down a Texas school district's policy permitting voluntary, student-initiated public prayers before high school football games. But the litigation over religious expression in public schools is likely to continue. It is a conflict in which two key First Amendment protections—freedom of speech and the prohibition against

state establishment of religion—seem to collide. And yet the real paradox, perhaps, is that neither side in this debate wants speech to be *really* free when it comes to religion.

The Supreme Court case, *Santa Fe Independent School District v. Doe*, began in 1995, when several families challenged the practice of having a prayer delivered over the school's public address system at the start of each home varsity football game. The plaintiffs—not atheists but Catholics and Mormons—saw this as part of a general pattern of promotion of a specific brand of Christianity by the schools of the mostly Baptist town. Teachers led prayers before lunch, handed out flyers for revival meetings, and in some cases actively proselytized students of other faiths and disparaged their beliefs.

After the lawsuit was filed, the district took steps to curb these excesses and devised an ostensibly neutral solution to the problem of public prayer at football games: The students would elect a speaker to deliver pre-game remarks—religious or secular—to "solemnize the event." It is this policy that the high court has rejected as thinly disguised public sponsorship of prayer.

In a caustic dissent, Chief Justice William Rehnquist complained that the majority opinion, written by Justice John Paul Stevens, "bristles with hostility to all things religious in public life." Yet Rehnquist conceded that if the disputed policy resulted in prayer, say, 90 percent of the time, it would probably be unconstitutional.

The same people who wax poetic about defending religious liberty for Christians can get very unhappy with the wrong kind of speech about religion.

Conservative critics of a strict separation of church and state frame the issue as one of free speech and free exercise of religion. This emphasis is shrewd political strategy—no one wants to admit to being against either freedom—but it also raises a thorny issue. If government schools allow student-initiated religious expression at official school events, are they unconstitutionally promoting religion? If they muzzle such expression, are they unconstitutionally suppressing speech?

Even conservative Pepperdine University law professor Douglas Kmiec, who believes that modern secularism has "perverted" the constitutional ban on an official state religion into a mandate to banish religiosity from the public square, wrote in *The Wall Street Journal* that, "given the peculiar facts of the case, the Supreme Court may have been right" to strike down the Santa Fe policy. Those facts included the district's history of practices that were clearly unconstitutional even under the narrowest interpretation of the Establishment Clause. The policy allowing an elected student speaker to deliver an invocation was rather transparently designed as a way to preserve pre-game prayer.

But in other, more complex cases currently moving through the legal system, there is a far stronger claim that absolute separation unfairly singles out religious speech. Take the saga of the brothers Chris and Jason Niemeyer, devout evangelical Christians and successive class valedictorians at Oroville High School in California in 1998 and 1999. The Niemeyers were barred from giving the traditional commencement address to their classmates because they wanted to talk about their faith.

As many schools require, Chris Niemeyer gave the school administrators an advance copy of his speech, which asserted that all people are "God's children, through Jesus Christ's death, when we accept his free love and saving grace," and urged listeners to embrace a "personal relationship" with God. The principal told him to tone down the religious message. After an unsuccessful attempt to get a court order securing his right to speak, the boy wanted to make brief remarks at graduation explaining why he couldn't give a speech. But school officials stopped him on his way to the podium and told him he couldn't speak at all—a gesture that prompted loud protests from the crowd and nearly sparked a riot.

The following year, Jason Niemeyer submitted a valedictory address that, while less focused on religion, concluded by urging all those present "to take advantage of the friendship that is offered us in Christ." After consulting with attorneys, the school forbade him to give the speech and also nixed a revised version with no direct references to Jesus.

Both of the brothers are suing the school district. So far, the courts have sided with the school, which argues that graduation is an extension of the school curriculum and that, therefore, sectarian commencement messages should not be permitted.

Yet had the brothers been allowed to speak, interpreting their remarks as "establishment of religion" by the state would have been far more of a stretch than in the Texas football case. A valedictorian's address has a clear secular purpose, and neither boy would have been the sole graduation speaker. It is doubtful that any student in the audience could have perceived a religiously themed valedictory speech as official endorsement of a sectarian creed by the school (any more than Chris Niemeyer's

election as class president in his senior year, at a time when he was also the co-leader of a Christian club at school, amounted to an endorsement of religion).

To remove any shade of suspicion, an administrator could have made a statement that any expressions of religious faith reflected the speakers' individual beliefs. Indeed, the concern of the officials seems to have been less that some people would feel coerced or discriminated against than that some people would feel uncomfortable.

In a declaration filed in the legal case, Chris Niemeyer's co-valedictorian, Delisa Freistadt, who is Jewish, stated that she was glad the court didn't "force" her to listen to his speech. The Niemeyers' attorneys counter, rather persuasively, that it is part of the American way that we are sometimes forced to listen to speech we don't like. (Freistadt could have countered speech with more speech and used her time at the podium to talk about respecting religious differences.) As applied in this case so far, the First Amendment seems to be less a guarantee of religious freedom than a speech code guaranteeing that no one's feelings are hurt.

There may be an anti-religion double standard at work as well. Some of the Niemeyers' local supporters gripe that the same school officials who muzzled the boys allowed the installation of a Vietnam War mural many people found objectionable. It also seems likely that if a public school had silenced a valedictorian who wanted to praise vegetarianism or assail racism, the mainstream media and the American Civil Liberties Union would have blasted the decision as an outrageous act of censorship.

The ACLU has criticized the free speech defense of student-initiated prayer at graduation, cautioning that such a position would force schools to grant equal access to all speakers of all viewpoints on a first come, first served basis—a less relevant concern when the issue is one of free expression for speakers already chosen on an ideologically neutral basis. It is also worth noting that the Colorado ACLU has championed the right of black students to wear a ceremonial African cloth over their graduation gowns as a protected form of expression.

An even better case that strict separationism can turn into censorship can be made in a suit currently pending in the U.S. Court of Appeals for the 3rd Circuit in Philadelphia, brought by the parents of Medford, New Jersey, schoolboy Zachary Hood. In 1996, each child in the boy's first-grade public school class was asked to choose a story to read aloud. Zachary's selection, the story of the reconciliation between the brothers Jacob and Esau from *The Beginner's Bible*, was deemed inappropriate by the teacher, even though it contained no mention of God or miracles. He was told that he could read it to her in private but not to the entire class.

In 1999 a three-judge panel of the 3rd Circuit ruled that the teacher acted properly, agreeing with the school's rather wobbly argument that permitting the story to be read in the classroom would have sent a message to the impressionable kiddies that "the teacher or the school endorsed the Bible." Late last year, however, the full court vacated that decision and agreed to consider the case, which may go all the way to the Supreme Court.

The Catholic League warned that if another theater company picked up the play *Corpus Christi*, it would "wage a war that no one will forget."

It would be difficult to dispute the religious conservatives' claim that the treatment of Zachary Hood or of the Niemeyers reflects "viewpoint discrimination" against religious speech. It is fairly clear that in these instances it is the exclusion rather than the inclusion of religion that may "discriminate against, or oppress, a particular sect or religion," as Justice William Brennan put it in the 1963 ruling *School District of Abington v. Schempp*, which found mandatory school prayer unconstitutional.

But it would also be disingenuous for the anti-secularists to claim that they want religion to be treated as just another viewpoint in the marketplace of ideas—a viewpoint which can be defended but can also be attacked and even ridiculed, like any other idea. Indeed, the same people who wax poetic about defending religious liberty for Christians can get very unhappy with the wrong kind of speech about religion. Just as religious conservatives now couch their demands for prayer in public schools in the "liberal" language of free speech, their attempts to squelch what used to be called sacrilege are couched in the politically correct language of anti-bigotry and opposition to "hate speech." The charge of "Christian bashing" (or "Catholic bashing") has been directed, for instance, at the ABC show *Nothing Sacred*, which questioned Catholic doctrine on birth control and priestly celibacy.

In 1998 news of a Broadway production of Terrence McNally's play *Corpus Christi*, depicting a gay Jesus-like character, sparked a predictable firestorm. The Catholic League for Religious and Civil Rights launched a letter-writing campaign demanding that the production be canceled. It is true, of course, that a protest is not censorship. But when the Manhattan Theater Club decided to cancel the play due to threats of violence and

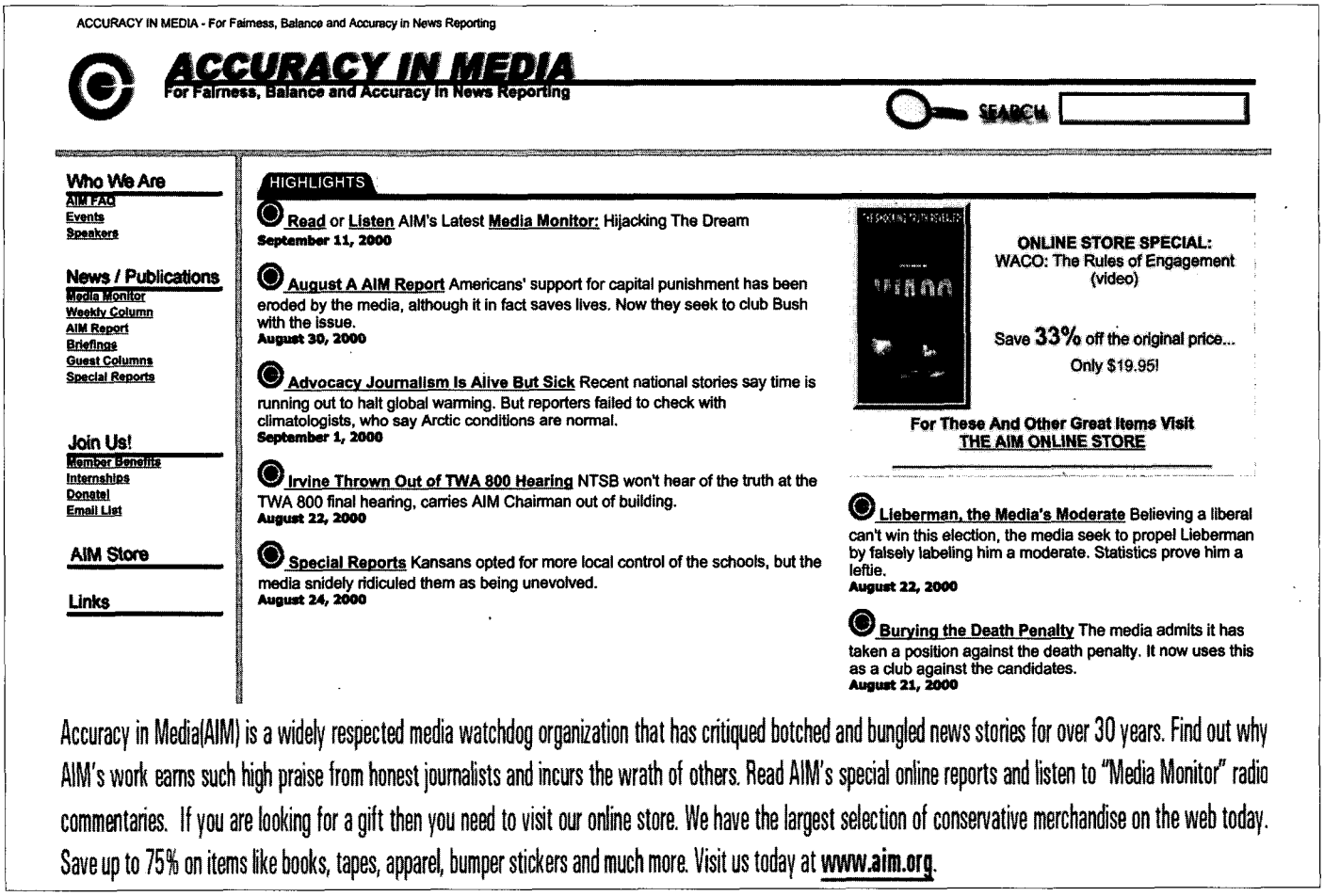
arson, the Catholic League's jubilant reaction did not show a strong commitment to free speech. While formally deploring the threats, the league warned that if another company picked up *Corpus Christi*, it would "wage a war that no one will forget." (The theater eventually revived the production after coming under fire from the press and from authors.) Catholic League President William Donohue explicitly, and favorably, compared the anti–*Corpus Christi* protests to the actions taken by racial, ethnic, and feminist groups against speech they find offensive.

And in July, in what may be the most creative use of hate speech phraseology to date, L. Brent Bozell's Media Research Center ran an ad accusing CBS of "condoning religious bigotry." *Early Show* host Bryant Gumbel had been caught on camera saying "What a fucking idiot!" after an interview with the Family Research Council's Robert Knight, who had defended on religious grounds the Boy Scouts' exclusion of gays. Even if Gumbel was referring to Knight and not, as some have claimed, to a CBS staffer, it is noteworthy that he used no slurs referring to Knight's faith. (Is it racist to call Al Sharpton a fucking idiot?) Nonetheless, Bozell invoked CBS' firing of sports oddsmaker Jimmy "The Greek" Snyder for televised comments about the innate racial superiority of black athletes and concluded that "racial bigotry on CBS is dealt with unequivocally; religious bigotry on CBS is met with a disinterested yawn."

In an essay published in *The New York Times Magazine* last January, legal commentator Jeffrey Rosen noted that the strict separationism endorsed by the courts in the early 1970s, which held that the government could not support any religious activity in any form, has given way to "a very different constitutional principle that demands equal treatment for religion." Under this doctrine, Bible study clubs and prayer groups can function on public school property on a par with other student groups, and parochial schools can receive federal aid for special education programs on a par with other schools. (School vouchers that would subsidize tuition at religious schools remain a more contentious issue.)

Rosen insightfully links the crumbling of the wall between church and state to the rise of cultural diversity: "In an era when religious identity now competes with race, sex and ethnicity as a central aspect of how Americans define themselves, it seems like discrimination—the only unforgivable sin in a multicultural age—to forbid people to express their religious beliefs in an increasingly fractured public sphere." As Rosen concludes, the resulting expansion of freedom of religious expression may well be a healthy development for public life. But the examples of race and sex also point to certain dangers. While the new appreciation of diversity can liberate discussion and expression, it can just as easily narrow the range of acceptable speech in order to protect sensitivities.

Contributing Editor Cathy Young (CathyYoung1@cs.com) is a research associate at the Cato Institute.


ACCURACY IN MEDIA - For Fairness, Balance and Accuracy in News Reporting
ACCURACY IN MEDIA
For Fairness, Balance and Accuracy in News Reporting
SEARCH
Who We Are
AIM FAQ
Events
Speakers
News / Publications
Media Monitor
Weekly Column
AIM Report
Briefings
Guest Columns
Special Reports
Join Us!
Member Benefits
Internships
Donate!
Email List
AIM Store
Links
HIGHLIGHTS
Read or Listen AIM's Latest Media Monitor: Hijacking The Dream
September 11, 2000
August A AIM Report Americans' support for capital punishment has been eroded by the media, although it in fact saves lives. Now they seek to club Bush with the issue.
August 30, 2000
Advocacy Journalism Is Alive But Sick Recent national stories say time is running out to halt global warming. But reporters failed to check with climatologists, who say Arctic conditions are normal.
September 1, 2000
Irvine Thrown Out of TWA 800 Hearing NTSB won't hear of the truth at the TWA 800 final hearing, carries AIM Chairman out of building.
August 22, 2000
Special Reports Kansans opted for more local control of the schools, but the media snidely ridiculed them as being unevolved.
August 24, 2000
ONLINE STORE SPECIAL:
WACO: The Rules of Engagement (video)
Save 33% off the original price...
Only $19.95!
For These And Other Great Items Visit
THE AIM ONLINE STORE
Lieberman, the Media's Moderate Believing a liberal can't win this election, the media seek to propel Lieberman by falsely labeling him a moderate. Statistics prove him a leftie.
August 22, 2000
Burying the Death Penalty The media admits it has taken a position against the death penalty. It now uses this as a club against the candidates.
August 21, 2000
Accuracy in Media(AIM) is a widely respected media watchdog organization that has critiqued botched and bungled news stories for over 30 years. Find out why AIM's work earns such high praise from honest journalists and incurs the wrath of others. Read AIM's special online reports and listen to "Media Monitor" radio commentaries. If you are looking for a gift then you need to visit our online store. We have the largest selection of conservative merchandise on the web today. Save up to 75% on items like books, tapes, apparel, bumper stickers and much more. Visit us today at www.aim.org.

SHAKY GROUND

WHY FLEXIBLE RULES AND REASONABLE REGULATORS ARE A BUILDER'S WORST NIGHTMARE

A couple of years ago, my wife and I were looking at a small house in a New England town that I will call "Hampshire." The property also encompassed a strip of land in the town to the north of us—let's call it "Yorkshire." Our intention was to buy and then expand the house, but we discovered two obstacles to doing so. The first was that the lot was "nonconforming" because it was just one acre in an area zoned for two-acre lots. To do any work, then, we would need a zoning variance. The second obstacle was a creek 80 feet from the house; its proximity meant we would need approval from the conservation authorities of both towns. To help us decide whether to go ahead, we called Hampshire Town Hall and spoke to the clerk, a pleasant woman who cheerfully answered our questions. Yes, she told us, most likely we would be able to expand. According to her, about 95 percent of all variances were approved.

BY GENE CALLAHAN

We weighed our decision. The asking price was very reasonable, and we loved the rolling property with its seasonal creek. But what if we weren't permitted to expand? We could always sell and move on. But this would entail two moves in two years, as our first child was on the way, and the house, without expansion, soon would be too small for us. With some trepidation, we finally made an offer on the house.

Having secured the house, we proceeded with plans to expand. That's when we discovered we would have to persuade the Hampshire Planning and Zoning Commission, the Hampshire Conservation Commission, the Yorkshire Planning and Zoning Commission, the Yorkshire Conservation Commission, and the Yorkshire/Hampshire Health District that we were worthy of the additional space.

Our architect, who had grown up in Hampshire, agreed to guide us through the approval process. I knew I had made the right choice when, at our meeting with the Hampshire Planning and Zoning Commission, one of the board members introduced our architect to another member by saying, "You remember Phil from the Hunt Club, don't you?" The architect and I had a site walk with the inspector from the health district, and another one with the building inspector. We attended one zoning meeting. We also attended conservation meetings—four of them.

I came to know the members of the Hampshire Conservation Commission like family—like my family when I was a teenager, as they considered whether to let me take the station wagon out on a Saturday night. The dominant personality on the commission was a fellow named Fred, who was also, not surprisingly, the chairman.

Fred was always smiling. He smiled at odd, inappropriate times, such as when saying, "You see, if we don't have an MA-103F Soil Test Form completed and in front of us, we're just not going to be able to proceed with your application." The smile seemed intended to assure people that Fred's request, however arbitrary and cumbersome it seemed, flowed from a fountain of wholly benign eco-concern.

One of Fred's main concerns was that everyone who came in for an approval would plant a particular species of river weed called "sedge" along the edge of their wetlands. In almost every application, Fred brought up the subject of sedge, always with great gusto. I began to wonder if Fred had ties to the National Sedge Growers Association. Exactly which plants would border your wetland was a matter of utmost concern to him. He made one supplicant agree not to plant a lawn within 20 feet of her creek as part of the terms of her approval. She had offered not to use any "chemical" lawn products, but Fred wasn't buying it. No, he explained, some future owner might be tempted to hire "ToxoLawn" to maintain that patch. The applicant was responsible not only for her own acts involving the wetlands but also the potential acts of future owners. She was enjoined from undertaking activities that, while not harming the wetlands in themselves, might tempt the guy who owns the house 20 years from now into harming them.

At one meeting we met the God of Boredom, whom we came to call Soil Engineer. He had been hired by some poor soul who was on his fourth trip to see the commission for a four-lot subdivision. The applicant also brought along a couple of fellows in suits—his attorney and his builder. Soil Engineer attempted to lull the board into submission by describing, in detail, the geological history of the lot from the Cretaceous Period to modern times. As the North American and European continental shelves separated, I found myself biting my lip to shock myself awake. I was sure that if my head slumped forward during the meeting, it would count against me when the vote on my property came.

I CAME TO KNOW THE MEMBERS OF THE CONSERVATION COMMISSION LIKE FAMILY—LIKE MY FAMILY WHEN I WAS A TEENAGER, AS THEY CONSIDERED WHETHER TO LET ME TAKE THE STATION WAGON OUT ON A SATURDAY NIGHT.

Soil Engineer began discussing "drumlins." Don't ask me what these really are—by this stage of the meeting I was in a semi-hallucinatory state, and my recollection is that it was inside a drumlin that Frodo Baggins first encountered a barrow wight.

Fred leaned forward with a knowing look on his face. The tension in the room heightened from none to the smallest amount above none that can possibly be measured. Had Fred found, amid the nearly pure white noise of this monologue, the melody that would resolve the dispute?

"Were the drumlins formed while the glaciers were advancing or while they were retreating?" he asked.

Could this really be the deciding factor? "Retreating? Good. Approved!" No—Fred was educating an audience whose knowledge of Ice Age New England he knew to be sorely deficient. Suddenly, the applicant exploded at the commission. All over the room doodling ceased and heads picked up. He launched into a tirade about how other, larger projects had been approved, because, he implied, the applicants were wealthy developers who gave generously to the campaigns of various town officials.

Predictably, the commission was not amused. Fred graced the supplicant with a gentle smile.

"We understand that you're upset," he said, "and we'd like to help you. But we're going to need some more information from you before we can proceed."

Fred then listed inconsistencies to be resolved, measurements to be made, obscure plant species to hunt for on the land. The applicant, duly chastised, shuffled off with his contingent.

Finally, after three hours of listening to other people's cases, our turn had come. "Callahan?" the clerk said. We indicated that we were present. The clerk opened the folder for our case. "Oh, the Town of Yorkshire hasn't responded to our letter of advisement," he said. "You'll have to come back for the next meeting." In two weeks.

Another notable person on the commission was the fellow whom we came to call Yes Man. He was the lonely representative of the idea that perhaps the town should have the burden of proving that there is ecological harm, rather than forcing the applicant to show that there isn't. At a certain point he would get bored with drumlins and soil microorganisms and blurt out, "I forward the motion that we approve this application." Occasionally his boredom would carry the day, as other commission members would begin to feel the same ennui and just want things ended with the conclusion that was probable anyway.

After three meetings with the conservation commission, Yes Man forwarded his motion, and we gained our approval. But we were not done with them yet. We made a change to our building plans that did not affect the footprint, and filed the changed plans with the building inspector. Since our impact on the wetlands hadn't changed, the architect felt that we weren't required to go back to the conservation commission. Apparently, he was wrong. Our builder was confronted by the town conservation officer, who threatened to shut the job down because of the change in plans. My architect called me and told me to bring my attorney to the next meeting. The sight of an attorney seemed to change the commission's mood. The board members were immediately conciliatory and merely admonished us by saying that they would "appreciate being told about these things."

In his popular 1996 book *The Death of Common Sense: How Law Is Suffocating America*, Philip Howard contends that the chief legal problem in America today is not that there are too many laws but that the law is not being applied "reasonably." Bureaucrats, he argues, are not given sufficient discretion when making their decisions. The result is that our obsession with "a government of laws, not men," is destroying government's ability to act rationally. "Relaxing a little and letting regulators use their judgment is the only way to liberate our judgment," Howard writes. He moves so far from the principle of the rule of law as to recommend regulating each of America's 4,000 most polluting factories individually.

Well, here we were in a situation where the bureaucrats had plenty of discretion and were very reasonable, yet we were worse off than if what we wanted to do were simply forbidden. In that case we just wouldn't have purchased the property. Instead, we had months of uncertainty after the purchase. We wound up spending dozens of hours of our time and thousands of dollars in fees for our architect's and our lawyer's hours. It was necessary to talk very politely and sound very eco-friendly to the conservation commission, especially when dealing with Fred. He could turn stubborn on a project and request information not possibly available at the meeting, sending the hapless applicant out to spend more cash and time determining the ratio of green-backed to yellow-backed slugs on his land.

At one meeting my wife felt compelled to hide the cover of a conservative magazine she was reading, for fear of offending some liberal on the board. Board members would pop over to our property at odd times of the day and walk the land. These intrusions into our private lives were made possible by the discretion these boards enjoy. What you want to do is forbidden by default, but if you're nice and don't put up a fuss about their choosing your landscaping plants or crashing your croquet party, they'll let your project go forward. As F.A. Hayek remarked in *The Constitution of Liberty*: "It used to be the boast of free men that, so long as they kept within the bounds of known law, there was no need to ask anybody's permission or to obey anybody's orders. It is doubtful whether any of us can make that claim today."

Our case, while daunting to us, was actually resolved comparatively easily. When I described its history to John Charles, environmental policy director at the Cascade Policy Institute, an Oregon-based policy research center, he expressed genuine surprise that we had been able to move forward so quickly. In contrast, REASON Contributing Editor James DeLong describes in his 1997 book *Property Matters* the case of a Pacific Grove, California, property owner who spent over $600,000 and three and a half years to get permission to build a residence on a 1.1-acre lot.

It is precisely the discretionary power of local land use authorities and the "reasonableness" of their procedures that lead to cases that drag on for months or years. Since there is no simple rule deciding whether a particular project can go forward, regulators must invest large amounts of time to show that they have considered all factors and have not been unfair or negligent in their final decision. In fact, the system gives them strong incentives never to make any decision at all—if they can merely delay decision until the project fades away, no one can blame them for deciding improperly.

In describing the difficulties of Andrew Varlow, who wished to expand on his Marin County, California, property, DeLong comments: "The planners fret about the size of the house, the effect on views, future development in the area, the possible impact on real estate prices, and the project's 'inconsistency with the goals' of the planning group (whatever these may be; the meeting minutes do not say). No standards are announced. Varlow and his people have spent over two years

on the project without any firm guidance that 'you can do this but not that.'"

Philip Howard would contend that the regulators should be held responsible for being dilatory, but this merely inserts another layer of administration making another round of discretionary decisions. After all, weren't the Marin regulators just using their legal discretionary power to withhold a decision until they felt certain that Varlow's project was "consistent with their goals"? By what guideline could the regulators be judged to have taken "too long"? And who will judge the regulators who judge the regulators?

During the third of our conservation commission hearings, our architect pointed out to the board members that we had a child on the way. They all nodded in understanding, and our approval came soon thereafter. Should this have been relevant to their decision? If we were childless pensioners, would we have had less right to expand? Hampshire is a Republican stronghold—might the decision have been different if we had been prominent Democrats? What would our odds have been if we had been a gay couple hoping to build in a fundamentalist Christian community? Blacks in an otherwise all-white town in the Deep South?

I have no idea if the applicant who yelled at the commission had any factual basis for his accusations of corruption. But a system in which a bureaucracy has discretionary powers over individual citizens will always lead to suspicions of this sort. Each case must be decided on its own, unique merits, so it becomes an entirely subjective judgment as to whether different parties received "equal" treatment.

The man who wanted the four-lot subdivision had much more trouble with conservation than we did. Because his motive was simply "profit," his standing with the commission was lower than that of a young and growing family needing living space. A commission tasked with protecting wetlands wound up assessing the moral worth of various applicants' projects.

Howard is wrong, and the defenders of the rule of law are right. Hayek, one of the greatest 20th-century advocates of the rule of law, saw that it is the keystone to liberty. People living under the rule of law have clear-cut guidance as to whether they are permitted to undertake some activity. This clarity leaves us free to plan our own actions, because we understand, vis-à-vis the legal system, what the consequences of those actions will be. All of us understand that if we kill someone and are caught, we will go to prison. Occasionally there will be gray areas in the law, such as determining when a killing might be in self-defense. But our town had set up a situation where the majority of contemplated development was in gray areas. In our case, it was never clear to us exactly what would decide the fate of our petition. As Hayek put it, "Nobody disputes the fact that, in order to make efficient use of the means at its disposal, the government must exercise a great deal of discretion. But...under the rule of law the private citizen and his property are not an object for administration by government, not a means to be used for its purposes. It is only when administration interferes with the private sphere of the citizen that the problem of discretion becomes relevant to us; and the principle of the rule of law, in effect, means that the administrative authorities should have no such discretionary powers in this respect."

In *Simple Rules for a Complex World* (1995), Richard Epstein argues that we should generally favor rules that offer a clear delineation of what is and isn't permissible over more complex rules that require discretion on the part of those enforcing them. He illustrates the principle with the example of lawsuits that involve harm caused jointly. For instance, your car struck mine after you failed to obey a stop sign one night. I, however, was driving without my headlights on, making it difficult for you to see me. Law that requires an "accurate" determination of how much each of our errors contributed to the accident necessitates great discretion on the part of those deciding the case—and leads to interminable trials with large legal expenses on both sides.

BOARD MEMBERS WOULD POP OVER TO OUR PROPERTY AT ODD TIMES OF THE DAY AND WALK THE LAND. THESE INTRUSIONS INTO OUR PRIVATE LIVES WERE MADE POSSIBLE BY THE DISCRETION THESE BOARDS ENJOY.

Epstein's suggested solution is elegant: simply split the difference, awarding half of the damages that would have been awarded had the plaintiff not also been negligent. Although this eliminates all discretion, and may seem to be unfair in some cases, Epstein contends that most cases wind up near this mid-way mark anyway. The huge administrative costs involved in the futile attempt to arrive at a "reasonable" apportionment of blame swamp the meager gains from the few cases where the result of a 50-50 split of losses is manifestly unjust.

Our problem was not that the town had set rules restricting our use of our property. Such rules are necessary, since some property uses significantly affect neighbors and, if permitted, would allow the property owner to impose large costs on others. Preventing us from building a nuclear weapons facility on our rural land in a residential neighborhood does not in a significant way impair our liberty. If we are hoping to con-

struct such a factory, we know in advance to avoid properties with residential-only restrictions, and therefore we are still able to plan.

But the town does not really intend that its restrictions be uniformly enforced. As DeLong points out, regulators prefer vague restrictions that allow them great leeway. This type of restriction requires an administrative apparatus with large discretionary powers, which serves chiefly to enhance the power of bureaucrats. The bureaucracy avoids a public outcry because it drives up the cost of new construction, limiting its supply and raising the prices of existing homes. For the majority of homeowners in town who do not intend to expand in the foreseeable future, the large losses suffered by a small minority are an acceptable cost of protecting their own investment.

DeLong recognizes the basic problem when he writes: "Several things are necessary to restore the balance [in regulation]. The first is to assert the boundaries and certainties of property rights. Cities need to get their basic rules in place, and then let people act, without more nit-picking detailed review. A recent news article reported on the success of city planning in Portland, Oregon. What does Portland do? Well, for one thing, it follows its own zoning laws. If the code says you can build apartments somewhere, that is what you are allowed to do."

Howard fails to see that it is in the market where citizens can properly exercise their discretion over property use and that once government is given discretion in this regard, it has the arbitrary power to decree one citizen's aims more worthy than another's. Although Howard cites Hayek, he does not seem to comprehend his message. Howard has no wish to limit the state's power to infringe upon private property rights as long as it does so "reasonably."

If you enter my house and begin to negotiate with me about what I may watch on TV, the issue at hand is not how reasonably you do so. You have intruded into my private sphere and are unwelcome, however reasonable your requests may seem to you or others. The U.S. Constitution does not say that Congress should "make no unreasonable laws respecting an establishment of religion"; it says that Congress shall make no laws at all establishing a religion. Congress is not enjoined from "unreasonably abridging the freedom of speech" but from any such abridgment. Of course, these rights may come into conflict with others, and the government is well within its bounds in preventing a religious group from practicing infanticide or in punishing free speech if it is slanderous. But these are rare exceptions to otherwise clear rules. As DeLong says, "What is needed is a restoration of government of law rather than government by whimsy."

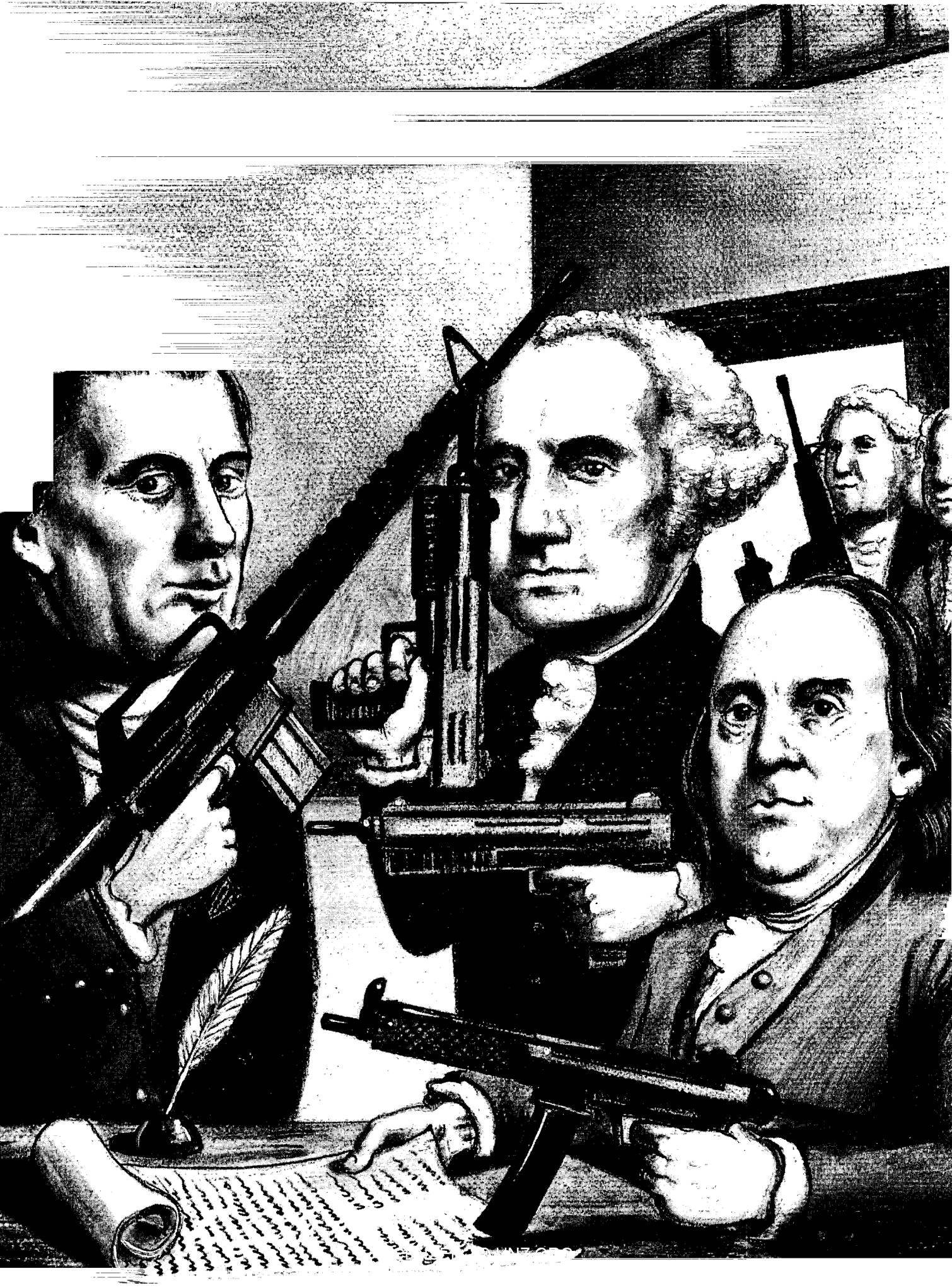
It is possible to conceive of other, realistic arrangements that would both preserve the property owner's liberty and achieve environmental and planning goals. A government, be it local, state, or federal, can set minimum guidelines that say when a project may proceed without, for instance, a wetland permit—if, say, it is more than 100 feet from any area that is below water more than six months a year. That government can then sell increasingly expensive permits that allow transgressing these limits, up to a point where certain activities, such as draining a pond, may be strictly prohibited. Strictly prohibited should mean that no exceptions can be granted, resulting in clear guidelines for the property owner. Where such restrictions impose a significant burden on property owners when compared to normal use in the area, takings law should apply, and the state should pay for the loss of normal use. (For instance, if two-acre zoning is the norm for an area, a restriction that limits a landowner to one house on a six-acre lot should require compensation.)

These permits should be made fungible, so that a market can develop in them. DeLong notes that such a system of transferable development rights has already been established in many municipalities. With a market in these rights, property owners could plan activities on a site with a reasonable degree of confidence by calculating whether the project would be worth the cost, including the purchase of the necessary rights. The revenue raised could be used to buy and preserve undeveloped properties. If the people in a town want to limit development, this purchasing of open land is by far the fairest and most efficient means available. The townspeople are not able to impose the cost of their preference for open space on isolated individuals, who have had a portion of their property rights seized in order to create a public good.

It is not only economically sensible to establish clear property rights in regard to wetlands, open space requirements, historic districts, and other land use issues. It is also morally correct. Even if a certain course of action is beneficial to a community and requires the abnegation of certain property owners' rights, this does not justify imposing the entirety of the cost of this community benefit upon a few individuals. DeLong notes that "these decisions [to restrict property use] involve a judgment by the supporters of the restriction that someone must sacrifice, and your friends and neighbors have selected you."

A healthier environment, historic preservation, open space: These are not goods that most of us should steal from a few of us. If we want them, we should all be prepared to pay our part of the cost. And citizens who want to use their property as they see fit should not have to grovel before boards that exercise arbitrary power over their lives. Having a "standing rule to live by" makes any tradeoff involved manifest and will ultimately result in both more respect for a community's true values and a more secure right to plan our individual futures. ◆

Gene Callahan (gcallah@erols.com) is a regular contributor to National Review Online, mises.org, lewrockwell.com, and Java Developer's Journal. *He is working on a book,* Economics for Real People, *to be published next year by the Ludwig von Mises Institute.*



Concealed Weapons

The controversial book *Arming America* has the facts all wrong.

By Joyce Lee Malcolm

Five months before the publication of *Arming America*, without seeing the text, *The New York Times* endorsed its author's claim that few guns, let alone a gun culture, existed in America prior to the Civil War. This was just the beginning of the media blitz that would greet the book. A glowing treatment by Garry Wills adorned the cover of *The New York Times Book Review*; congratulatory reviews appeared in *The Washington Post*, the *Chicago Tribune*, and other papers; the author, Emory University historian Michael Bellesiles, was interviewed on National Public Radio and had an essay in *The Chronicle of Higher Education*. Reviewers have hailed *Arming America* as a "myth-buster" that "changes everything," a book destined to raise the gun control debate to a more "fact-based and rational level."

If the point at which America became a "gun culture" seems too academic an issue to arouse such intense excitement, the tributes on the book's dust jacket make it clear that something else is afoot. "Thinking people who deplore Americans' addiction to gun violence have been waiting a long time for this information," says Stewart Udall, the former congressman and secretary of the interior. For those still uncertain why thinking people have been waiting for this, or what the "everything" is that has changed, Cornell University historian Michael Kammen cites the book's "inescapable policy implications." As those blurbs suggest, *Arming America* has been enthusiastically embraced by gun control advocates as an aid in their effort to persuade Americans (and their courts) that they do not have, and never have had, a constitutional right to be armed.

Any book that can raise the level of debate on any subject, especially one as emotional as gun control, is certainly welcome. The key to a book's value, however, is not whether its findings are those any of us "have been waiting a long time for" but whether they are, in fact, correct. Before considering whether *Arming America* has indeed shattered a myth, it might be helpful to reflect on why gun control advocates are so excited about a book that, even if accurate, seems only tangentially related to their cause.

Arming America: The Origins of a National Gun Culture, by Michael A. Bellesiles, New York: Alfred A. Knopf, 640 pages, $30

Behind the hype is the cantankerous debate over the meaning of the Second Amendment's single sentence: "A well regulated Militia being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." This debate has fallen prey to a passionate political agenda. Proponents of gun control are convinced that guns in the hands of individuals are to blame for violence in America. Their effort to strictly control, if not eliminate, those guns conflicts with the belief held by most Americans that "the right of the people to keep and bear arms" applies to them. Hence the Second Amendment has been subjected to intense and critical scrutiny.

Some commentators have argued that the awkwardly worded article guarantees only members of a well-regulated militia, such as today's National Guard, a right to be armed. According to this view, the amendment protects a "collective right" for particular groups. By 1975 the issue had become so confused that the members of an American Bar Association committee charged with sorting it out threw up their hands and announced, "It is doubtful that the Founding Fathers had any intent in mind with regard to the meaning of this Amendment."

Since then scholars from various fields have delved into the matter and found overwhelming contemporary evidence that the Founders inherited and meant to guarantee an individual right, and none to support the notion that a collective right was intended. This body of work has persuaded such eminent constitutional scholars as Lawrence Tribe and Leonard Levy that the Second Amendment protects an individual right.

Opponents of this view have come up with new, increasingly tenuous arguments. First came the claim that the phrase *bear arms* was used exclusively in a military context, so its inclusion in the Second Amendment must refer only to militia members. Yet in early American discourse, *bear arms* often referred to simply carrying a weapon, as a 1998 Supreme Court decision found it still does. (The Second Amendment, of course, also protects a right to "keep" arms, but so far there has been no attempt to redefine *keep*.) Next came the theory of Carl Bogus, an employee of Handgun Control Inc., that the Second Amendment was the result of a conspiracy between Northern and Southern states to guarantee weapons to keep slaves under control. Among the problems with the Bogus approach is the absence of any direct evidence for such a conspiracy. Then there was the "comma theory," which argued that the stem of the Second Amendment's single sentence, which refers to "the right of the people," can be eliminated because it is set off by commas. The amendment would then read, "A well regulated militia being necessary to a free state...shall not be infringed." One wonders what would hap-

MATTHEW STRAUSS

pen if the entire Constitution were interpreted by removing passages surrounded by commas.

Now Michael Bellesiles' book has appeared with a new argument: Guns were rare before the Civil War, and Americans had little interest in owning them. Is Bellesiles correct that neither a gun culture nor many guns existed in early America? He defines a gun culture as a fixation on firearms, and he is probably right that no such general obsession existed until the mid-19th century, if then. But his claim of a nearly gun-free America, the real basis of his argument, is more problematic. Guns, he asserts, were expensive, inefficient, rare, and restricted. He says they were heavily regulated, were owned only by a wealthy few in England, played little role in the conquest of the New World, adorned few colonial mantles, were seldom used for hunting, and were borne by few militiamen and even fewer of their friends and neighbors.

Bellesiles is in good company in finding fault with early muskets; they were cumbersome and inaccurate. He is also among many who criticize the American militia as a fighting force, although few scholars would agree with him that it was "little more than a political gesture." His novel claims about the numbers and uses of firearms, however, demand careful examination. Readers and reviewers are entitled to assume that a professional historian will present evidence fully and fairly, although we might disagree with his interpretation. And any author can make mistakes. But Bellesiles' "myth busting" findings are not supported by his sources. Moreover, he presents a skewed selection of records, dismisses contradictory information, and even alters the language of quotations and statutes. A few examples must suffice.

Bellesiles' discussion of English customs and rights, which are the basis for American use of firearms, provides a starting point. He informs us that the few guns available in England from the 16th through the 18th centuries were severely regulated and restricted to the rich. It's true that there were restrictions on handguns, but when Henry VIII converted his militia from bows to muskets in the 16th century, thousands of Englishmen had to "find" a gun and be trained in its use. Indeed, Henry urged residents of every city and town to "have and keep in every of their houses any such handgun or handguns, of the length of one whole yard...to the intent to use and shoot the same" against the time "when Need Shall Require."

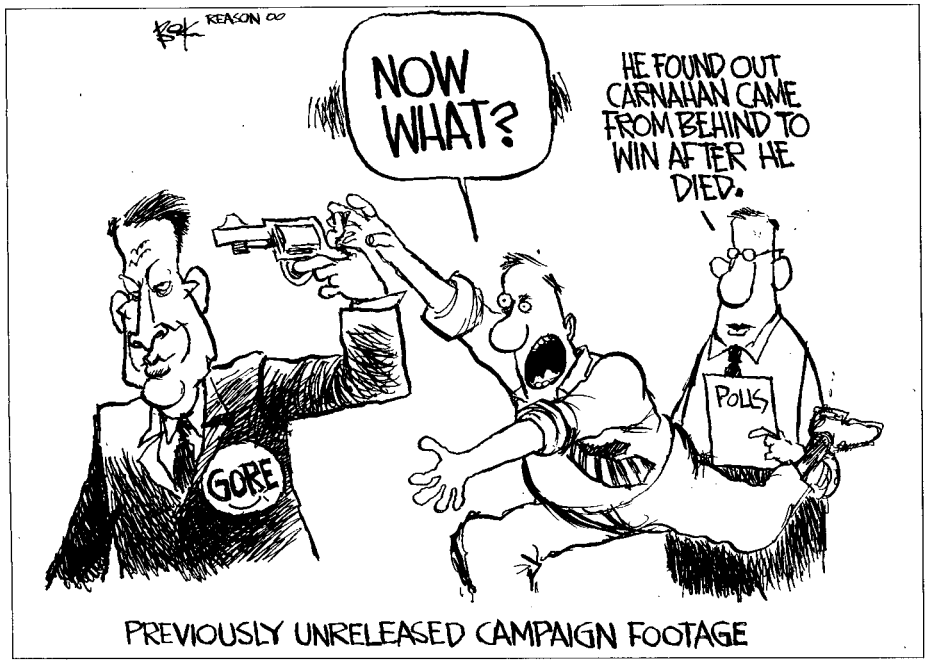
In the 17th century, numerous gangs of armed robbers prowled English highways, and poor laborers were routinely hauled into court for misuse of their firearms. Yet Bellesiles assures us that "only the aristocrats among private citizens owned the frightening new firearms" and that guns "rarely saw use outside of warfare." He claims that most personal violence in early modern England arose from contests between troops of Morris dancers! Neither source he cites for this astonishing allegation supports that claim, a discrepancy not confined to that footnote alone. Readers are informed of the right to have arms that the English Bill of Rights granted to Protestants—then some 90 percent of the population—only as proof that "the English preferred to maintain a tight control of guns."

Michael Bellesiles' eagerness to "bust a myth" about America's gun culture has induced him to create one.

On to America. Here Bellesiles finds firearms rare, expensive, regulated, and useless, a contention made easier by his equation of firearms with military muskets, ignoring handguns, fowling pieces, and other light weapons. He reports that Americans "often perceived the ax as the equal of the gun" and refers to "the complete failure" of early settlers to care for guns "or learn their use." Bellesiles writes that, while colonial legislatures "occasionally" required citizens to own firearms, they appreciated "how improbable it was for them to fulfill that goal." In fact, such laws were not occasional; they were routine, insistent, and enforced. Poor Virginians were provided with guns at reduced cost or set to work to earn their weapons. Historian Harold Gill, who examined 572 colonial Virginia inventories, found guns listed in nearly 80 percent of men's estates. Bellesiles claims weapons were usually housed in government arsenals, not homes. But Connecticut was typical in requiring every householder to "always be provided with and have in continual readiness" a musket or other firearms.

Bellesiles attacks as myth the idea that Americans owned firearms for hunting. He reports that 80 travel accounts he surveyed, written in America between 1750 and 1860, fail to mention hunting with guns. Yet many of the very narratives he cites, such as the memoir of Indiana frontier life by Rush Baynard and Anne Newport Royall's *Letters from Alabama*, describe the general use of guns for hunting and self-defense. And while the Englishman Charles Augustus Murray, one of the writers cited by Bellesiles, found few "gentlemen" hunters in the 1830s, he noted that "nearly every man has a rifle, and spends part of his time in the chase." Bellesiles omits dozens of other travelers who describe widespread ownership of firearms, among them Alexis de Tocqueville. The famed French observer describes a typical "peasant's cabin" in Kentucky or Tennessee as containing "a fairly clean bed, some chairs, a good gun."

Bellesiles' main proof for the absence of firearms is his analysis of more than 11,000 probate inventories from 1765 through 1859. He found that only 14.7 percent of 18th-century inventories even mentioned a gun, and many of these were described as old or defective. Probate records, however, are an uncertain source: These inventories don't mention bequests prior to death; families sometimes take items before the probate is taken; and some probates deal only with real estate, not personal property. Harold Gill found it not unusual for a probate inventory of a known artisan to include nothing indicating his trade. Still, Bellesiles insists that probates contain an exact reference to



every item, no matter how trivial, even those that had been passed on to a friend or relative before death.

Although this exhaustive probate research forms a major part of his evidence, Bellesiles does not give the numbers of probates for each time period or any particular county, only a list of county names. Where he is specific, he has distorted the findings. Take the case of 186 inventories from early Providence—unusual, he reports, in that 48 percent mentioned guns. "If one could imagine these 186 men as a militia company," Bellesiles tells us, "half would be unarmed and a third armed with guns too old for service. And yet they would have been one of the best-armed forces of their time." Intrigued, James Lindgren, a professor of law at Northwestern University, examined the inventories and found that "virtually everything Bellesiles said about these records was false." Not 48 percent but 62 percent mentioned guns, of which not the 33 percent Bellesiles claimed but only 9 percent were described as old. Lindgren also examined probates from one of Bellesiles' frontier counties and compared the numbers of guns listed to the other sorts of property mentioned. He found more guns than knives, more guns than books, more guns than Bibles.

Finally, we come to a more disturbing sort of misrepresentation. Bellesiles quotes George Washington's report on the state of the militia in 1756: "Many of them [are] unarmed, and all without ammunition or provision." Bellesiles adds that Washington found in one company only 25 of more than 70 men "had any sort of firearms." Yet historian Clayton Cramer found Washington was referring not to the general state of the militia, as Bellesiles would have us conclude, but, in Washington's words, to "the odd behaviour of the few Militia that were marched hither from Fairfax, Culpeper, and Prince William counties, Many of them unarmed."

Of the Militia Act of 1792, which enrolled all free white men between the ages of 18 and 45, Bellesiles writes that "Congress took upon itself the responsibility of providing [their] guns, and specified that within five years all muskets 'shall be of bores sufficient for balls of the eighteenth part of a pound.'" In fact, the law states that "every citizen so enrolled and notified, shall within six months thereafter, *provide himself* with a good musket or firelock" and other accoutrements (emphasis added). For tallies of firearms, Bellesiles uses a series of Massachusetts and federal censuses of militia firearms as if they were complete surveys of all civilian guns, and he omits tallies from federal arsenals.

Enough said. Point after point meant to illustrate a nearly gun-free early America is, upon examination, unsupported by the copious sources Bellesiles cites. He sidesteps counter-evidence. He ignores or dismisses statements by John Adams, Patrick Henry, Noah Webster, Richard Henry Lee, Thomas Jefferson, James Madison, and others to the effect that their countrymen were well-armed.

New views of history are useful. They provoke historians to re-examine their ideas and their evidence. Sometimes that evidence is found wanting, but not this time. Michael Bellesiles' eagerness to "bust a myth" about America's gun culture has induced him to create one.

Joyce Lee Malcolm (jmalcolm@bentley.edu), a professor of history at Bentley College and a senior fellow in the MIT Security Studies Program, is the author of To Keep and Bear Arms: The Origins of an Anglo-American Right *(Harvard).*

The Last Picture Postcard

By Lynn Scarlett

A guy who likes Holiday Inns and sees some virtue in outlet malls can't be a snob. A lack of pretension is part of what enables well-regarded and prolific novelist Larry McMurtry to travel America's interstate highways with pleasure. McMurtry isn't necessarily crazy about urban sprawl and its lower-density version, urban scatter. And he's no glutton for punishment: Where he can, he steers clear of the "automotive killer bees" of big-city traffic jams. Still, McMurtry enjoys the America that so many highbrows deride: the America of chain stores, Burger Kings, and roadside billboards.

Roads: Traveling America's Great Highways, by Larry McMurtry, New York: Simon & Schuster, 208 pages, $25

These days, critics of our national landscape and culture often lament the loss of

go to page 51

CHIP BOK

Bigger and Badder

More books are more available than ever before. So who's complaining?

By Brian Doherty

Among American writers, there's a long and revered tradition of attacking markets as the enemy of a rich and vibrant literary culture. Hawthorne did it, Melville did it, and now Andre Schiffrin, the former top dog at Pantheon, does it in *The Business of Books: How the International Conglomerates Took Over Publishing and Changed the Way We Read* (Verso). Where Hawthorne moaned about the "damned mob of scribbling women" who dominated the bestseller lists of his day and Melville rationalized his loss of a popular audience as a sign of his true genius, Schiffrin lays into Big, Bad Business in an insider's memoir that draws on 40 years in publishing.

The consolidations of publishing imprints and the demise of small, "independent" book stores at the hands of national chains, he complains passionately, have been disasters for serious writing and thinking in America. Now head honcho at the New Press, Schiffrin says that the conglomerate owners of most American publishers expect every book to make historically unlikely profits, abandoning the old principle whereby a few bestsellers threw off enough cash to subsidize noble tomes that everyone knew would never make a dime.

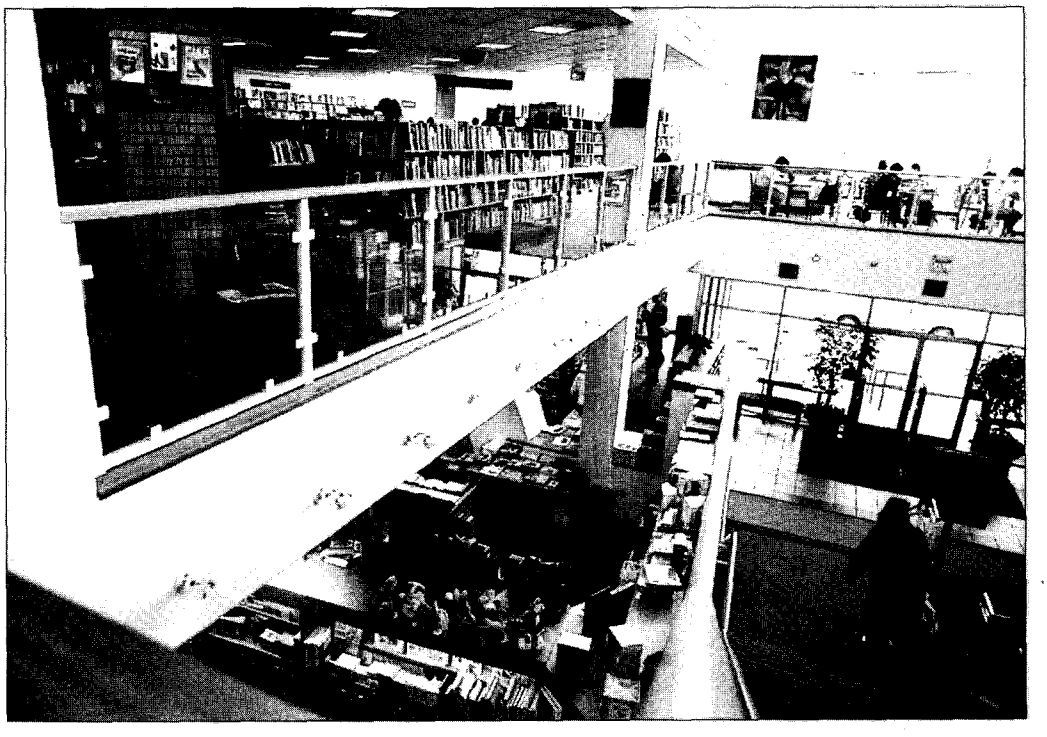
What's more, according to Schiffrin, the big money boys have abandoned publishing serious policy books of a leftist bent, or, same thing, won't do what it takes to make them huge successes. Predictably, he recommends antitrust actions and government subsidies as solutions to the book industry's supposedly woeful state.

Some of Schiffrin's specific complaints have bases in fact. Over the past few years, there has been a huge consolidation in the publishing industry. (The widely discussed 1998 takeover of Random House—itself a major conglomerate that includes imprints such as Alfred A. Knopf, Pantheon, Ballantine, and Bantam—by German juggernaut Bertelsmann was simply the highest profile instance of a broad trend.) And national chains have surpassed independent book stores as the place where people like to buy books. (In 1997, according to the Book Industry Study Group, 25.2 percent of books were sold at chains vs. 17.2 percent at independents. The rest were sold through book clubs and other outlets, including used book stores, discount clubs, and drug and grocery stores.)

But from a reader's perspective, such insider concerns are wholly besides the point. Schiffrin and other old publishing hands may care whether today's corporate shills are keeping faith with the ghost of Alfred Knopf. Readers, however, care about a different issue: Is a wide range of books appealing to a wide range of interests widely available?

Anyone who has spent 10 minutes in a Borders or Barnes & Noble superstore—bad guys in Schiffrin's book—who doesn't see that the answer is a ringing, resounding "yes" is simply blind.

Even Schiffrin isn't too willing to argue that point. In a recent phone interview, I asked him about Borders and its tremendous selection. He is neither fool nor knave, and could not deny that, hey, it's a great bookstore. Still, he offered, there is a certain *je ne sais quoi* about the independent bookstore. Variety of voices, and all that. Skill and passion in owners and employees. One of the things indie bookstores can offer, says Schiffrin, is a



Borders

HOLLY FREEDMAN

knowledgeable and dedicated staff made up of actual book lovers, and not just minimum-wage drones.

Fair enough. During my last visit to a Borders in Los Angeles to examine Schiffrin's book, the clerk had no idea who Schiffrin was or what book he had just published. His initial computer search on the title came up with nothing. He then tried an author search that worked just fine. He helpfully walked me over to the literary criticism section, where six copies of Schiffrin's book excoriating the state of the book market sat, just waiting to be taken home.

The Business of Books asserts that cultural decisions are now made by grim bean counters who only green-light projects with massive sales potential.

And all around me was similar bounty: Sixteen different titles by or about Walter Benjamin, 20 books by or about Michel Foucault (an author Schiffrin is proud to have introduced to the mass American market while running Pantheon), hundreds of offerings from small foreign presses and university presses, shelves of books dedicated to gay concerns (including huge Tom of Finland art collections), selections in every specialty that matched or beat what even the best independent store has.

There was 100 feet of serious history, 20 feet of philosophy, books on radical labor leaders from such nonradical presses as Harcourt Brace and Plume—even a huge scholarly biography of Ho Chi Minh from Disney's Hyperion imprint. If books of leftist politics are no longer dominating American intellectual life, it's not for lack of titles.

In *The Business of Books*, Schiffrin pushes a popular leftist trope, that "market ideology" has come to rule the world since the bleak days of Thatcher and Reagan, that all decisions, even cultural ones, are now made by grim bean counters who will only green-light projects with massive sales potential. Yet he himself presents the evidence that the policies he decries—throwing huge advances at celebrities, ignoring the midlist, ballooning executive salaries, general crassness—are not rewarded by the market. Rupert Murdoch's HarperCollins, he notes, writes off $270 million in unearned advances. When S.I. Newhouse sold Random House to Bertelsmann, it was reporting a whopping 0.1 percent in annual profits. Not everything done by a conglomerate is in fact an example of "the application of market theory to the dissemination of culture." Schiffrin describes cases where people with more money than sense are losing some of that money. Now *that's* the free market at work.

So is this: In the face of everything Schiffrin decries—consolidation, S.I. Newhouse's philistinism, university presses doing more middlebrow nonfiction and fewer pure scholarly monographs, and the death of many small booksellers—most Americans have more access to a wider range of books of all qualities and types than ever before.

Even—or perhaps especially—the left seems to be feasting during this supposed famine. Certainly Schiffrin is doing just fine for himself and his noble causes over at the New Press, one of whose first books was a bestseller on a serious political issue from a left perspective, Studs Terkel's *Race: How Blacks and Whites Think and Feel About the American Obsession.*

So if in fact books like that aren't being published, it's not because of market ideology run amuck; it's because the conglomerates are being bad businesspeople. Schiffrin ends his book by saying, "We must hope that in the coming years more people...will realize how dangerous it is to live in a culture with a limited choice of ideas and alternatives."

Indeed. We can also hope that in the coming years people will realize how blind many cultural critics really are. ◆

Brian Doherty (bdoherty@reason.com) is an associate editor of REASON.

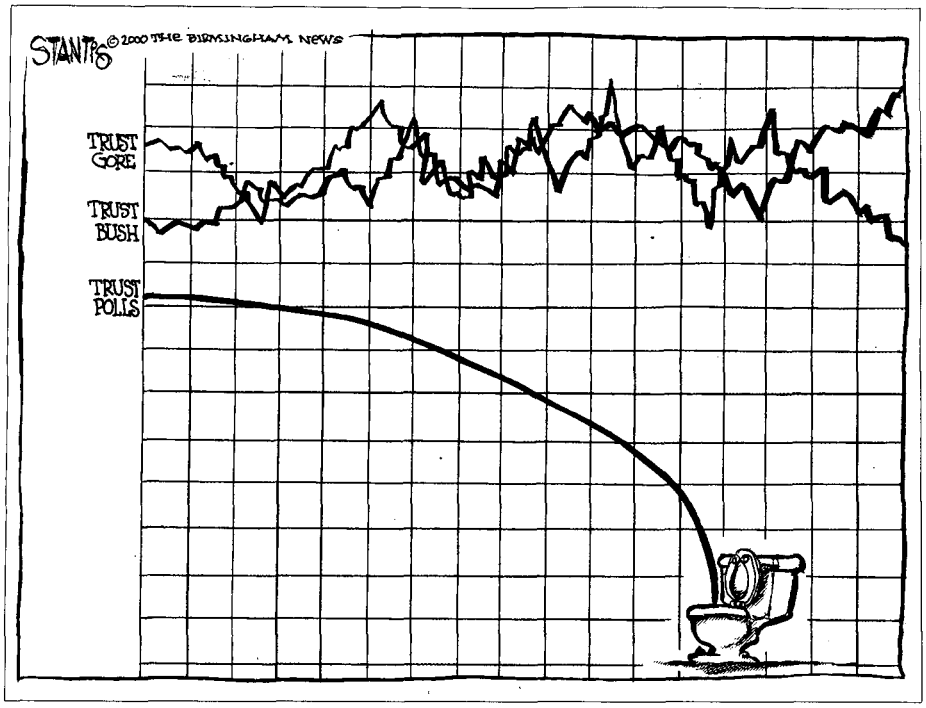
"community," by which they usually mean self-contained small towns or patches of big-city neighborhoods where grandpa sits on the brownstone stoop at dusk. Or they rail against the eruption of rural "starter castles" amid once-working cattle ranches that have been transformed into urban cowboy retreats. Often, critics openly abhor the commonplace and the crass, deploring above all "consumerism."

McMurtry, however, is an iconoclast. It would be going too far to say he celebrates urban sprawl or vanishing cattle ranches or the American thirst for store-bought things. But his travelogue, *Roads*, gives at least two cheers for contemporary America. A *Chicago Tribune* reviewer,

"Place itself cannot be homogenized," writes McMurtry. "A thousand McDonald's will not make Boston feel like Tucson."

writing about McMurtry's Pulitzer prize–winning epic *Lonesome Dove*, said that it had, "both in general and in details, the authority of exact authenticity." So it is with *Roads*. McMurtry brings us America as it is. And for the most part, he enjoys it.

McMurtry especially likes America's great interstates. He likes Holiday Inns because they are predictable and, above all, comfortable. Others seek authenticity by prowling seldom-used back roads to find quaint, tucked-away hamlets that have a turn-of-the-(last)-century ambiance. Not so McMurtry. He blasts down the nation's interstates at "modestly illegal speeds" and admires their functionality. Their aim, he writes, "is to move you, not educate you." On one jaunt he manages 1,100 miles in a day and a half. Along with thousands of American truckers, he exalts in this accomplishment: "What made it possible to travel that distance...was the great road itself, a highway designed for just that type of travel. I never had to go more than one hundred yards off the highway for food, gasoline, and a rest room....Des Moines



was bypassed so neatly that I didn't have to slow down at all."

When he breezes past outlet malls in the Midwest, he doesn't smirk at these cathedrals of consumerism. Instead, he muses that they have improved many lives—at least the lives of Midwesterners: "For people mired in the depths of what one might call the inner midwest...the arrival of outlet malls is a blessing. They may have to lead pretty dull lives, but at least now they can *shop*, see what's new at Liz Claiborne, or get their kids nice overalls at Oshkosh B'gosh." Such shopping marvels, he opines, may fall short of Armani, but they're "still better than what was there before."

It's not that McMurtry eschews the more highbrow cultural stuff packed away in museums, financed by the National Endowment for the Arts, or analyzed in the pages of *The New York Review of Books*. In fact, his book is part highway travelogue and part literary criticism. As he travels down the interstates, he blends commentary on the latest billboard—those announcing microsurgical vasectomy reversal figure prominently in *Roads*—with observations about Hemingway, Fitzgerald, Longfellow, and dozens of other American writers, past and present.

But McMurtry is ready and willing to find points of interest beyond the nation's museums, national monuments, and literary masterpieces. He delights in the quirkiness of the stuff that draws regular American folk off the highways, such as road signs about the world's largest prairie dog or a five-legged cow. The billboard for the 500-lb., man-eating clam was so irresistible that it actually lured him off the road and out of his car. (His curiosity remained unfulfilled, because the store housing this carnivorous wonder was closed.)

Of course, even a big-city critic might find some redemption in these roadside circus wonders. Kitsch, after all, is always in style. But McMurty also thinks commonplace American pastimes are OK. The riverboat and Indian casinos that have cropped up all over the interior U.S. during the past decade, he says, "provide midwesterners with a way to be a little wicked without traveling all the way to Vegas." More important, perhaps, they "provide at least a modest amount of glamour in a notably glamourless place."

What is most striking about McMurtry—and what sets him apart from many who cover the same territory—is his ability to see detail and diversity where others profess to see only homogenization. Where the cultural elite alternately fears and sneers at a homogenized America filled with big, look-alike chain stores and lifeless Levittowns, McMurtry is explicit in his rejection of the claim that "it all looks alike." Despite chain stores and repetitive suburbs, he says, America does not all look the same: "It doesn't, and it won't, no matter how many McDonald's and Taco Bells cluster around the exits. There are, after all, McDonald's in both Moscow and Paris, but few would argue that Russia and France look the same."

It is his eye for detail—and his willingness to find authenticity in the ordinary—that enables McMurtry to make such a claim. The lighting, for example, is always different—"the winter light in Sault Ste. Marie, at the head of the 75, will never be like the light over the Everglades, at the bottom of that road. Eastern light is never as strong or as full as western light." His bottom line: "Place itself cannot be homogenized. Place will always be distinct. A thousand McDonald's will not make Boston feel like Tucson."

It's not just his ability to see detail but the pleasure that he takes in everyday American comforts and cultural escapades that separates McMurtry from the culturally fussy. McMurtry's father was a Texas rancher who admired greatness "in things that mattered to him." For McMurtry's dad, this meant bulls. "Sometimes," the son recalls, "because of the magnificence of some of these great animals, [my father] would come to a full stop and just sit looking, arrested by admiration as a stroller in an art museum might be when brought face-to-face with a great picture—a Rembrandt, a Matisse."

For the modern motorist like McMurtry, today's equivalent of a prime specimen bull is a good interstate, whose beauty lies in its extreme functionality and convenience. On his latest round of interstate trips, McMurtry discovered a new wonder: Valet Park, a ubiquitous parking service, in Los Angeles. Hollywooders, he discovered, "may be willing to spend their lives on the freeways or beside the freeways, but one thing they are increasingly reluctant—indeed, unable—to do is park their own cars. In Santa Monica, West Hollywood, Beverly Hills, Westwood, even laundries have Valet Park. Grocery stores have Valet Park." McMurty is quite taken with Valet Park (as am I). McMurtry, who confesses that he is even "thinking of building a novel around it," sees it "as the newest *real* advance in California living,"

SCOTT STANTIS

another example of Los Angeles "on the cutting edge."

While others rail against the automobile or outlet malls, McMurtry saves his venom for the Border Patrol. From reading *Roads*, one gets the idea that McMurtry is a guy who likes freedom, hard work, and some degree of chaos—or at least spontaneity. The urge to migrate, he insists, is a natural human inclination. So, too, is the urge to seek a better life. McMurtry, thus, does not care for the Border Patrol: "However mild and courteous the Border Patrolman may turn out to be, the image that registers in the mind, as you drive slowly toward the uniformed policeman with the big dog, is an image from the iconography of Nazism. The association might be unfair, but it's also unavoidable. The struggle of the poor brown people of the south and the more affluent northerners who seek to retard their entry is unrelenting and... corrosive. It poisons the whole border."

For related reasons, McMurtry doesn't care for "spic-and-span" Minneapolis. But he likes St. Paul, Minnesota, which "has all the virtues of the melting pot: easygoing, tolerant, with plenty of watering holes and lots of people watering at them."

This is the America that McMurtry seems to like pretty well. He marvels that sexploitation films from the early '70s could show up at an Amoco truck stop in the middle of nowhere (and he seems highly conversant with their contents). He gets a big uplift from the American creativity embedded in a handmade sign on a wall in Sheyenne, North Dakota. The sign says, simply, "Nothing was ever lost through enduring love of North Dakota." McMurtry is no romantic. He doesn't pretend to love Sheyenne, or North Dakota for that matter. But he does feel gladdened by the sign, because someone felt that way about North Dakota and put it in words on a wall.

Lynn Scarlett (lynns@reason.org) is vice president for research at the Reason Foundation.

From Russia With Malice

By Sean McMeekin

At the height of the Kosovo war, with the U.S. embassy in Russia besieged by bazooka-carrying, bottle-throwing Slavic nationalists, two maverick American journalists based in Moscow publish a detailed map directing anti-NATO activists to nine Western military contractors' local branch offices, just in case anyone might wish to ransack them. A year later, during the "historic" election campaign that would see Russia's first ever "democratic" transfer of power, the danger-loving duo court the Kremlin's wrath by aggressively promoting a shut-down-the-vote campaign to sabotage President Putin's inevitable self-coronation.

Flush with cash from their first book deal, the serial provocateurs then offer a $1,000 reward to anyone "who helps bring about the arrest or firing" of various enemies guilty of "crimes against human decency." Leading the luminaries are drug czar Barry McCaffrey, accused of invading Americans' civil liberties, and the U.N.'s chief administrator in Kosovo, Bernard Kouchner, flagged for the statistical offense of "8,892 counts of fictional murder."

Such deliberate provocations are almost unthinkable in the staid environment of American political journalism, but they are the stock in trade of *the eXile*, a controversial biweekly tabloid (circulation 25,000, plus a big Web audience) published in Moscow since 1997 by two angry Americans, Mark Ames and Matt Taibbi. Their new book might best be described as the joint memoir of two guerrilla commanders emerging unscathed from a series of bloody raids on the media establishment. The book blends new commentary with features and artwork reproduced exactly as they first appeared in the tabloid. The result is not always easy on the eyes, but it is an excellent introduction to Ames and Taibbi's brand of writing. That is to say, it is partisan, cruel, and often side-splittingly funny. I do not recommend it for the easily offended.

the eXile: Sex, Drugs, and Libel in the New Russia, by Mark Ames and Matt Taibbi, New York: Grove Press, 256 pages, $16

Ames and Taibbi have carved out a singular niche for themselves. American libel lawyers can't touch the paper in Moscow, and Russian censors pay little attention to a tabloid that reaches only the minuscule Anglophone minority of voters. In this legal no-man's-land between two governments, *the eXile*'s editors enjoy virtually unheard-of license to write and say what they want about prominent figures, without fear of retaliation.

They have a lot of fun with this freedom, playing pranks that take advantage of politicians' pretensions. *The eXile*'s most famous stunt saw no less than Mikhail Gorbachev entering negotiations to secure a paying position as "perestroika coordinator" for the New York Jets. Self-promoting former World Bank bigwig Charles Blitzer, head of that organization's Moscow office, could not resist the urge to pontificate when Ames, posing as a reporter for a fictitious newspaper called *Moskovskaya Svoloch* (in Russian, *Moscow Bastard*), left a message on his machine asking for comments on a precipitous one-day drop on the Russian stock market in 1997. By calling back, Blitzer revealed that he had not bothered to learn the language of the country "whose economy he had once more or less administered for years." He also tripped on the first question he was asked, explaining that Mongolia's exchange had followed Moscow's down because of the recent Asian crash. (In fact, the Mongol market rose 6 percent the same day Russia's fell by 20.) Here was a world-renowned economic guru, *the eXile* crowed, who "couldn't even predict events that had already happened."

Besides tweaking the powerful with practical jokes, Ames and Taibbi do some real damage with their political reporting. Years before anarchists took to the streets of Washington, Taibbi was painting the World Bank as a bustling den of thieves that lent money to Russia only if it would hire teams of high-priced foreign consultants—while simultaneously insisting that

go to page 55

Muerte a Las Vegas

Will fine art kill Sin City?

By Charles Paul Freund

"The market economy," architect Rem Koolhaas recently told *Wallpaper* magazine, "has lobotomized political consciousness. We need to construct a place for this again." An admired writer on social and cultural issues as well as a superarchitect in the class of Le Corbusier and Frank Lloyd Wright, Koolhaas is playing a leading role in constructing politics out of design. Among his many projects is a retail tower in San Francisco for the edgy fashion chain, Prada. The building is made of foam, a project Koolhaas characterizes as "a deliberate metaphor for the state of architecture." He's also engaged in a Harvard study on communism, in which, in his words, "We will look at how communism, from 1922 to 1980, was able to organize itself relatively successfully, from the Elbe to the Pacific, while maintaining its idealism."

But his most publicized project involves a pair of art display spaces. Koolhaas has been chosen by the Guggenheim to design its new galleries...in Las Vegas. This extraordinary tableau—the elite Guggenheim and the political Koolhaas working together in the capital of kitsch—is a remarkable act by the art establishment.

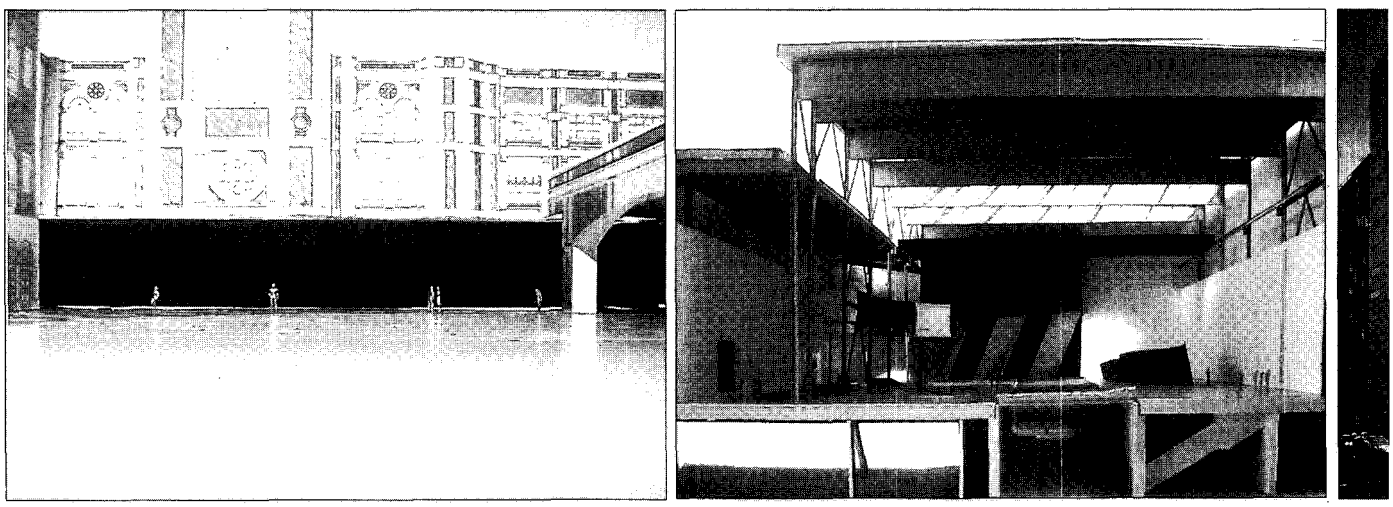
In awarding the projects—a small gallery attached to the Venetian casino and a large, freestanding museum—to the 55-year-old Dutch designer, the Guggenheim has seemingly transformed its project. For years, the museum and its curators have been at the center of a roiling controversy over the changing role of such art institutions; specifically, whether in their zeal for bigger crowds of paying gawkers, such museums were abandoning their role as stewards of art and as uplifters of public taste.

According to some critics, the Guggenheim reached a nadir of pandering when it mounted its controversial "Art of the Motorcycle" exhibit in 1998. That exhibit drew the biggest crowds in the museum's history, but detractors were disturbed both by the concept and by the fact that the show was underwritten by Harley-Davidson. (Curiously, no one wondered whether motorcycle design would be affected by an entombment in an elite gallery, as jazz has been undone by its entombment in elite concert spaces and its debilitating appropriation by elite tastemakers.)

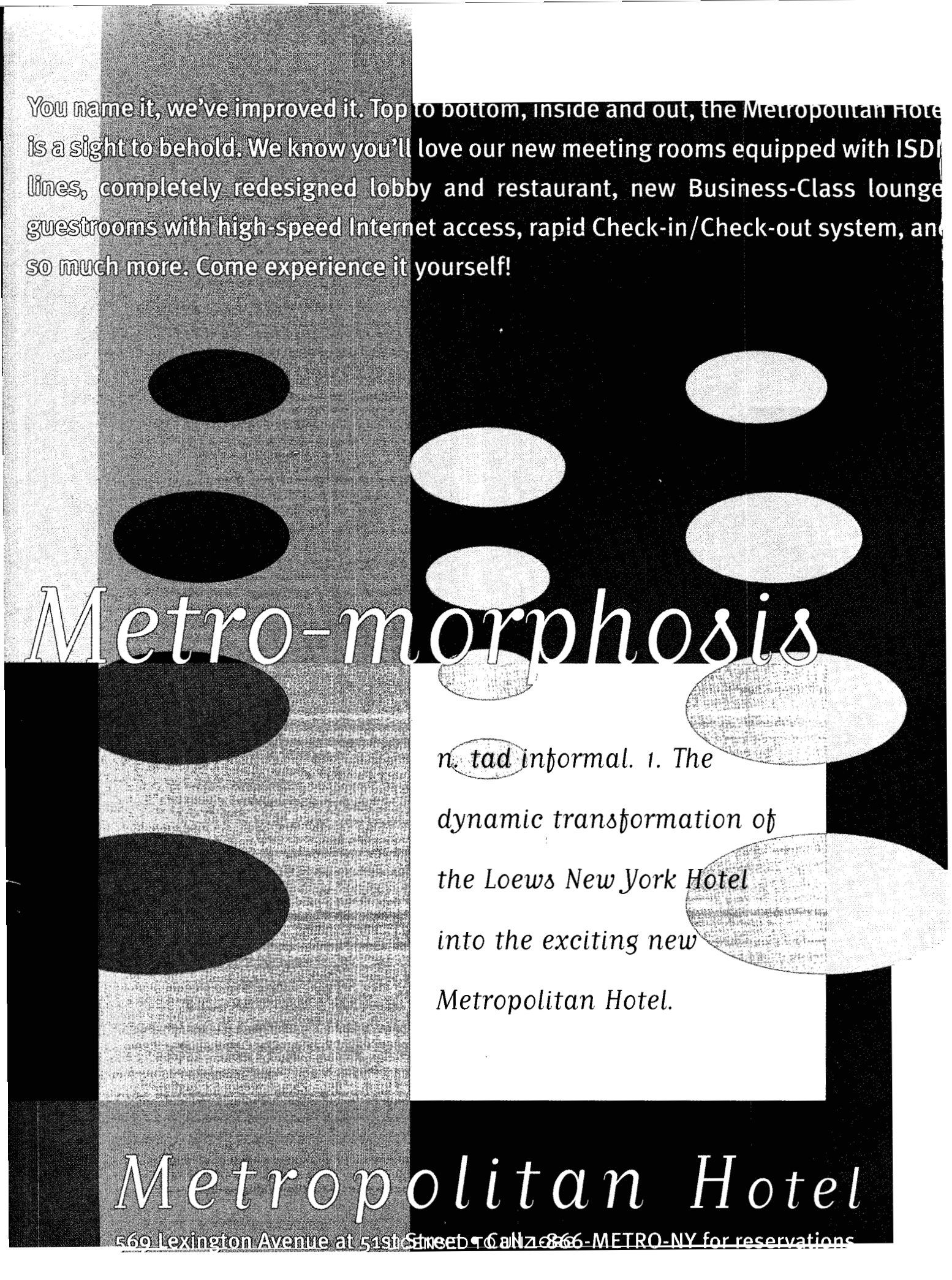
But the Guggenheim has since enjoyed an enormous triumph, not so much with the artworks it displays as with the buildings in which it displays them. The Guggenheim structure in Bilbao, Spain, designed as a flowing mass by Frank Gehry, has drawn hordes of people who just want to see the building. And, after all, the original Guggenheim structure in Manhattan, designed by Frank Lloyd Wright, established the institution's image in the first place. If you want to appreciate its founding audacity, try hanging art on a round wall.

The Guggenheim's plans to build in Las Vegas originally seemed like another effort to chase ticket-buyers; its plans were inspired by the spectacle of tourists lining up in 1998 to see the Picassos hanging over the slots in the new Bellagio casino. But the choice of Koolhaas changes the Vegas Guggenheims into something else: an act of architectural *engagement.*

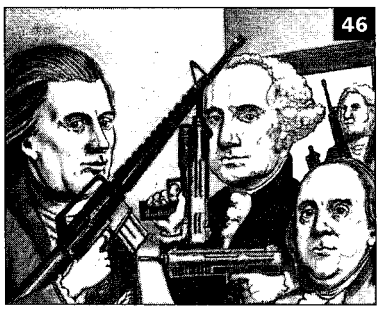
"Engagement" is Koolhaas's central working concept; what he wants to engage with is the commercial world that he regards as politically and socially lobotomizing. Architects, he has argued in his writings, are guilty of retreating before an onslaught of commercialism. He accuses them of working in an "architectural ghetto" of universities and a few elite clients, when they should be out challenging and rebuild-

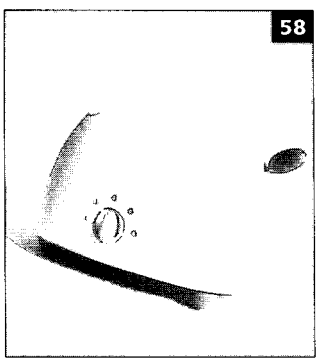


LEFT, CENTER: OMA 2000; RIGHT: DAVID HEALD


You name it, we've improved it. Top to bottom, inside and out, the Metropolitan Hote
is a sight to behold. We know you'll love our new meeting rooms equipped with ISDI
lines, completely redesigned lobby and restaurant, new Business-Class lounge
guestrooms with high-speed Internet access, rapid Check-in/Check-out system, an
so much more. Come experience it yourself!
Metro-morphosis
n. tad informal. 1. The
dynamic transformation of
the Loews New York Hotel
into the exciting new
Metropolitan Hotel.
Metropolitan Hotel
569 Lexington Avenue at 51st Street • Call 1-866-METRO-NY for reservations
Printed on recycled paper

REASON®
Free Minds and Free Markets®
January 2001/Vol. 32 No. 8





Articles

20 Dr. Strangelunch by Ronald Bailey
Or: Why we should learn to stop worrying and love genetically modified food.

30 America's Most Dangerous Politician: An Interview With Gary Johnson by Michael W. Lynch
The governor of New Mexico on taxes, school vouchers, and drug policy.

37 God Talk by Cathy Young
The First Amendment vs. freedom of speech.

41 Shaky Ground by Gene Callahan
Why flexible rules and reasonable regulators are a builder's worst nightmare.

Editorial

4 Presidential Blowup by Nick Gillespie
In an election more obscure than an Antonioni film, Bill Clinton's real legacy comes into focus.

Columnist

18 Capital Letters: All Losers' Night by Michael W. Lynch
In which our man in Washington desperately cruises for losers on election night and learns from experts how the new president should—must!—govern.

Culture & Reviews

46 Concealed Weapons by Joyce Malcolm
A controversial book has the facts all wrong.
Arming America: The Origins of a National Gun Culture, by Michael A. Bellesiles

49 The Last Picture Postcard by Lynn Scarlett
Roads: Traveling America's Great Highways, by Larry McMurtry

50 Bigger and Badder by Brian Doherty
More books are more available than ever before. So who's complaining?

53 From Russia With Malice by Sean McMeekin
the eXile: Sex, Drugs, and Libel in the New Russia, by Mark Ames and Matt Taibbi

54 Muerte a Las Vegas by Charles Paul Freund
Will fine art kill Sin City?

Departments

8 Letters
The rights of great apes, debating animal experimentation...

12 Citings
Artists vs. the state, Mormons vs. DARE, Indianapolis vs. video games...

58 Artifact: Downmarket Deluxe
Why Target is more stylish than The New York Times.

Cover illustration: Kerry P. Talbott

REASON (ISSN 0048-6906) is published monthly except combined August/September issue by the Reason Foundation, a nonprofit, tax-exempt organization, 3415 S. Sepulveda Blvd., Suite 400, Los Angeles, CA 90034-6064. Periodicals postage paid at Los Angeles, CA, and additional mailing offices. Copyright© 2000 by Reason Foundation. All rights reserved. Reproduction or use, without permission, of editorial or graphic content is prohibited. Reason and Free Minds and Free Markets are registered trademarks owned by the Reason Foundation. **SUBSCRIPTIONS:** $19.98 per year. Outside U.S. add $10/year surface, $55/year airmail. Address subscription correspondence to Reason, P.O. Box 526, Mt. Morris, IL 61054, 815-734-1102. For address change (allow six weeks), provide old address and new address, including zip code. **UNSOLICITED MANUSCRIPTS** returned only if accompanied by SASE. **INDEXED** in Readers' Guide to Periodical Literature, InfoTrac, Historical Abstracts, Political Science Abstracts, America: History and Life, Book Review Index, and P.A.I.S. Bulletin. Available on microfilm from University Microfilms International, 300 North Zeeb Rd., Dept. P.R., Ann Arbor, MI 48106. **Printed in the United States. POSTMASTER:** Send address changes to Reason, P.O. Box 526, Mt. Morris, IL 61054. Publications Mail Sales Agreement No. 1476696.

Presidential Blowup

In an election more obscure than an Antonioni film, Bill Clinton's real legacy comes into focus.

By Nick Gillespie

As we go to press, the *finale ultimo* of the presidential race has yet to be staged. There's every indication it will be a Busby Berkeley–type production number, possibly featuring the U.S. Supreme Court, heated accusations of voter fraud ("irregularities," in the new parlance) and civil rights violations, and enough vitriol and acrimony to irradiate the White House at least through the 2004 presidential campaign. Florida's contested ballots have yet to be counted definitively, New Mexico has recently flip-flopped from one candidate to another, and possible challenges loom in Iowa, Wisconsin, and Oregon, states where Al Gore's leads number only in the small thousands.

A million absentee ballots in California have yet to be tallied, threatening the vice president's lead of roughly 210,000 in the national popular vote. As Sunshine State citizens stage rallies noisy enough to disrupt vote recounts, pundits are spinning out ever more lurid and ludicrous scenarios, including ones in which Joe Leiberman becomes George W. Bush's vice president and Speaker of the House Dennis Hastert (R-Ill.) gets sworn in as president of the U.S. in January.

With each passing hour, the election seems less and less an exercise in democracy and more and more like a wild script directed by Michelangelo Antonioni. Antonioni's famous 1966 film *Blowup* follows the adventures of a fashion photographer in Swinging London who, while taking random pictures in a park, may or may not have photographed a murder. During the course of the film, the photographer enlarges his pictures in the hope of clarifying the details but finds instead that everything just gets murkier. Antonioni's film invites audiences to study ambiguous photographic images until they became random collections of dots on a page, devoid of any definitive meaning.

So it is with Campaign 2000, which confronts us with an uncomfortable but unavoidable truth: Ideological spinmeisters aside, there is no absolutely good vote count available in this election. Given the number of votes cast nationwide and the slim margins separating Gore and Bush, either candidate could plausibly be declared the winner of the popular vote or the electoral vote.

The presidential race was a dead heat that forced us to admit that reality is ambiguous and that politics always plays a role in its definition. Which is to say that the race was a fitting tribute to Bill Clinton.

What's more, because neither candidate will end up with even 50 percent of the popular vote, whoever is declared the winner will disappoint more than half of all voters (not to mention the whopping 49 percent of eligible voters who didn't bother to cast a ballot this time around).

Both the Bush and Gore teams have implored the other to be "statesmanlike" and to concede the election rather than put the nation through the unseemly spectacle of two men who desperately want to be president duking it out to the bitter end. Needless to say, the argument that the other should just quit for the good of the country cuts both ways.

Out of circumstance and necessity, hard math has been replaced with what George W. Bush would no doubt call its fuzzy cousin. This is particularly true in Florida, where election officials in select counties have ordered "manual recounts" and are poring over paper ballots for a third tally, this one by hand, trying to "divine" the intentions of voters from incorrectly or imperfectly completed ballots.

Are those all-important and damnable "chads," the perforated squares on punch-card ballots that voters are supposed to knock out with a metal stylus, "hanging," "pregnant," or merely "dimpled"? What, if anything, do those different conditions indicate vis-à-vis voter intent? Apart from fears of conscious post-vote tampering, could the ballots be affected simply by repeated handling?

Particularly in overwhelmingly Democratic Palm Beach County, where the number of disputed ballots has ranged as high as 30,000, the manual recounts are plainly an exercise in political projection: The ballots are essentially Rorschach blots, and no one doubts that the Gore supporters in charge of the process will "see" enough new votes to help their candidate declare victory.

Yet such obvious and ideologically charged shenanigans only come into serious play in elections that are close to begin with, and Florida's is certainly that, with the race separated by a few hundred votes out of more than 6 million cast. The dramatic difference between the original machine count and the automated recount—Bush lost close to 1,400 votes—underscores the lack of certitude in such matters. Bush representative James Baker may be right that the machines are "non-partisan," but that doesn't mean

they are accurate.

This presidential race, then, is not so much a *political* crisis as an *epistemological* one. It is a dead heat that forces us to admit that reality is, in the end, ambiguous and that politics always plays a role in its definition.

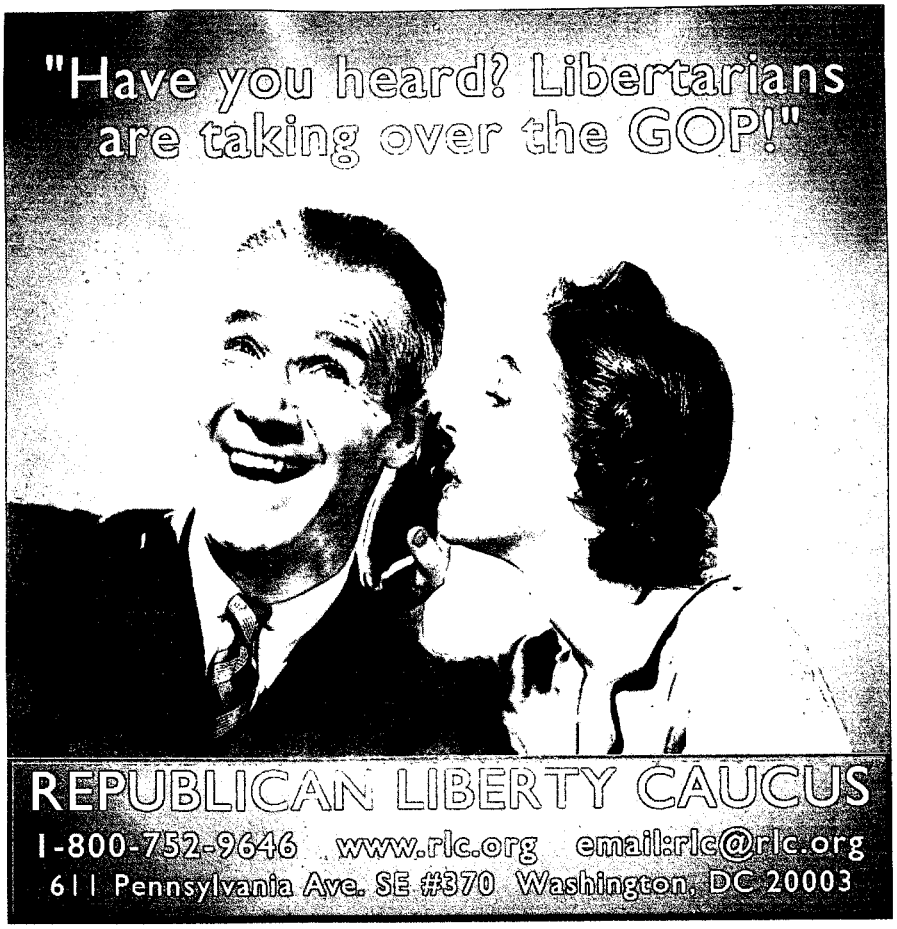
Which is to say that, whoever ends up in the White House next year, the presidential election has been a fitting final tribute to Bill Clinton.

Consistently throughout his two terms, the guarantor of the "most ethical administration" in U.S. history has asked, or perhaps insisted, that we puzzle over seemingly clear words such as *is* and *sex* until everything solid dissolves into air—until reality, common sense, and anything like plain facts are totally up for grabs and subject to ubiquitous "spin" and an all-out "permanent campaign."

As the man from Hope finally exits 1600 Pennsylvania Avenue in January (we can be reasonably sure—though perhaps not as certain as we'd like to be—that this will indeed happen), his true legacy may be that he has supercharged the nation with a thoroughgoing skepticism toward elected officials and politics in general.

While it is an old joke that politicians are liars and scoundrels, Clinton set a new standard for open and ultimately acceptable mendacity with his finger-waving disavowals (he didn't have sexual relations with *that* woman), grotesque distortions (the Branch Davidians who died at Waco were simply "some religious fanatics [who] murdered themselves"), and self-serving historical assessments (the House Republicans should "apologize" to the country for impeaching him—his survival of which, incidentally, he says was one of the great triumphs of his presidency).

It is something of a national parlor game to debate the exact moment when the United States "lost its innocence" as a nation, when we had to finally grant that perhaps we were not immune from the fallen state we ascribe to every other country on Earth. Most people shy away from our obviously darker historical episodes, such as the incorporation of the three-fifths clause in the Constitution or Andrew Jackson's forced resettlements of Native Americans, in favor of relatively light moments, such as the game show


"Have you heard? Libertarians are taking over the GOP!"
REPUBLICAN LIBERTY CAUCUS
1-800-752-9646 www.rlc.org email:rlc@rlc.org
611 Pennsylvania Ave. SE #370 Washington, DC 20003

Need Bear Market Protection?

The PRUDENT BEAR FUND can help hedge your portfolio in *down* markets:

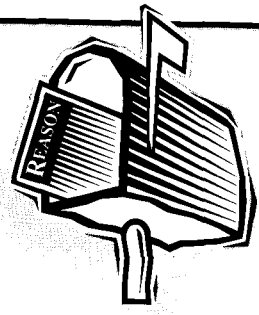
	3/10/00-10/12/00	7/16/99-10/15/99	7/17/98-10/8/98	1/22/97-4/2/97
Prudent Bear (No load)	**24.3%**	**28.1%**	**68.3%**	**10.9%**
Dow Jones	2.0%	-10.3%	-16.8%	-4.4%
NASDAQ Composite	-39.0%	-4.6%	-29.3%	-13.4%

For a prospectus and more information on Prudent Bear funds call

1-888-PRU-BEAR (778-2327)

The Prudent Bear Fund (no load shares) total return for the 12 months ending September 30, 2000 was -9.6%, and its average annual return since inception (Dec. 29, 1995) through September 30, 2000 was -15.7%. Performance data quoted represents past performance, which is no guarantee of future results. You should realize that investment return and principal value will fluctuate so that shares, when redeemed, may be worth more or less than their original cost. The prospectus contains more complete information, including fees and expenses. The prospectus should be read carefully *before* you invest or send money.

www.prudentbear.com



Dear Subscribers,

We hope your magazine arrives safe and sound each month. But if it doesn't—or if you have any other subscription problems—please accept our apologies and keep in mind these helpful hints:

■ Expiration Date

You will find your subscription expiration date printed above your name on the mailing label.

■ Change of Address

Please give us eight weeks' notice. Send both your old address (simply send us your current mailing label) and your new address to: Reason, P.O. Box 526, Mt. Morris, IL 61054.

■ Duplicate Copies

If you receive two copies of the same issue, check both mailing labels carefully—the slightest difference can cause problems. Then send us both labels, indicating which is correct, and we'll rectify the matter. (You may continue to receive a "complimentary" copy for a month or two.)

■ Billing Problems

The fastest way to solve a billing problem of any kind (billing error, duplicate invoice, et cetera) is to send us a letter explaining the error, plus any related invoice(s), and your mailing label. We will take corrective steps immediately.

REASON
P.O. Box 526
Mt. Morris, IL 61054
1-888-REASON-8
Subscribe@reason.com

STANTIS ©2000 THE BIRMINGHAM NEWS COPLEY NEWS SERVICE
I DID NOT HAVE SEXUAL RELATIONS WITH THAT WOMAN
THAT DEPENDS ON WHAT 'IS' IS
MY TESTIMONY WAS NOT FALSE AS I DEFINE THE TERM
THE LEGACY BUILDING CONTINUES...

scandals of the 1950s.

The Clinton years have provided a fresh supply of material to kick around in this discussion, including the suspiciously timed and never justified bombing of a Sudanese pharmaceutical factory on the eve of Monica Lewinsky's grand jury testimony, the launching of an air strike on Iraq just before the House's impeachment vote, and the spectacle of feminists such as Gloria Steinem, who, after helping to run the lecherous lush Sen. Bob Packwood (R-Ore.) from office, articulated a "one-free-grope policy" to excuse alleged sexual improprieties by the president.

Through his routinely Jesuitical pronouncements and actions, Clinton has managed to lower the bar on cynicism regarding those wielding power. In a post-Nixon age, that is no small achievement and must rank right up there with Clinton's three truly singular accomplishments: signing a major welfare reform bill that has helped put poor Americans on the road to self-sufficiency, overseeing an ostensible balancing of the federal budget, and delivering both houses of Congress to the Republicans for the first time since the Eisenhower era. We might add as well one potential achievement: By failing to ever win a majority of the popular vote and by so dramatically overreaching legislatively in his first term that he became a minority president, he has arguably sped along the death of the imperial presidency.

To be sure, the outgoing president is not solely responsible for the generally heightened levels of scrutiny and cynicism directed at politicians. Pathological Clinton haters aside, he had more than a little help from outspoken, sanctimonious, and hypocritical Republican critics such as family-man-cum-phone-sex-addict Rep. Bob Livingston (La.), anti-abortion adulterer Rep. Henry Hyde (Ill.), and Rep. Dan Burton (Ind.), who memorably called the president a "scumbag"—an epithet that would seem to apply equally to the congressman himself, who fathered and then failed to support an illegitimate child.

Though many worry about the corrosive effects of such cynicism, it's not necessarily a bad thing. To the extent that such cynicism acts as a limit on political power, and not merely as an excuse for its abuse, it is all to the good.

Put slightly differently: We do not know yet whether the Clinton presidency was an anomaly or a precedent. Regardless of who ends up moving into the White House come January, we will find that out soon enough. ◆

Nick Gillespie (gillespie@reason.com) is editor-in-chief of REASON.

SCOTT STANTIS

You think your proposal is good.

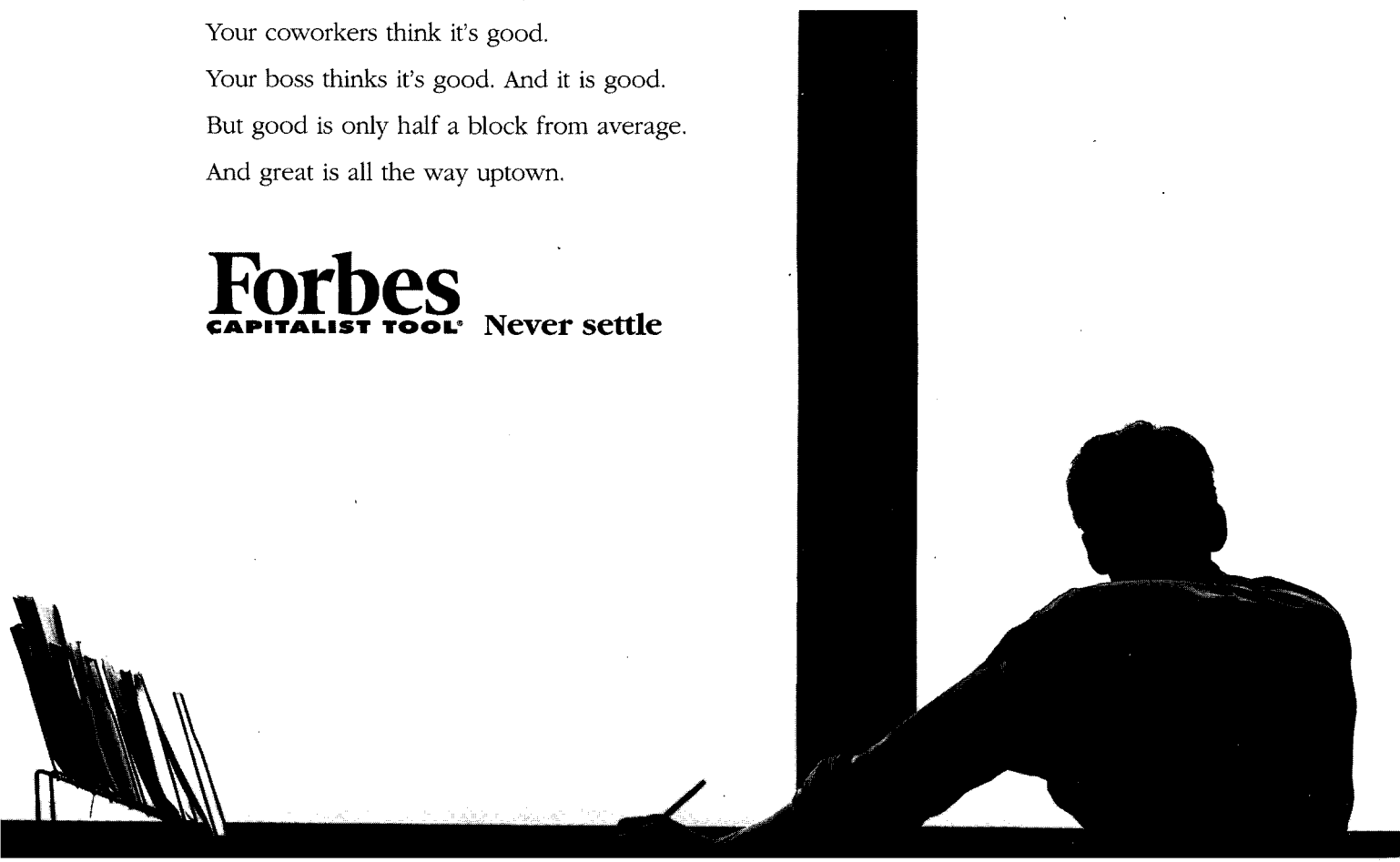
Your coworkers think it's good.

Your boss thinks it's good. And it is good.

But good is only half a block from average.

And great is all the way uptown.

Forbes
CAPITALIST TOOL® **Never settle**



REASON
www.reason.com

President Robert W. Poole Jr.
(bobp@reason.com)

Editor-in-Chief Nick Gillespie *(gillespie@reason.com)*

Senior Editors
Charles Paul Freund *(cpf@reason.com)*
Jacob Sullum *(jsullum@reason.com)*
Associate Editors
Brian Doherty *(bdoherty@reason.com)*
Jesse Walker *(jwalker@reason.com)*
Washington Editor Michael W. Lynch *(mwlynch@reason.com)*
Assistant Editor Sara Rimensnyder *(sarar@reason.com)*
Science Correspondent Ronald Bailey *(rbailey@reason.com)*
Editor-at-Large Virginia Postrel *(vpostrel@reason.com)*

Editorial Assistants Robert Honrado, Mary Toledo

Art Director Barb Burch *(bburch@reason.com)*

Webmaster Brian J. Taylor *(webmaster@reason.com)*
***Reason Express* Writer** Jeff A. Taylor *(jtaylor@reason.com)*

Contributing Editors
Gregory Benford, James V. DeLong, Edith Efron, Glenn Garvin, Steven Hayward, Thomas W. Hazlett, David R. Henderson, John Hood, Alan Charles Kors; Brink Lindsey, Carolyn Lochhead, Loren E. Lomasky, John McClaughry, Deirdre N. McCloskey, Michael McMenamin, John J. Miller, Charles Oliver, Walter Olson, John J. Pitney Jr., Thomas Szasz, Frederick Turner, Martin Morse Wooster, Cathy Young

Cartoonists
Chip Bok, Henry Payne, Scott Stantis

Publisher Mike Alissi *(malissi@reason.com)*
Circulation Director Alyssa Garey *(agarey@reason.com)*
Assistant Publisher Michael Orendy *(michaelo@reason.com)*

Legal Adviser Don Erik Franzen

Editorial and Production Offices
3415 S. Sepulveda Blvd., Suite 400
Los Angeles, CA 90034-6064
310-391-2245 Fax: 310-391-4395

Washington Office
1717 Pennsylvania Ave., NW, Suite 260
Washington, DC 20006
202-955-1324 Fax: 202-955-3187

Advertising Sales
The Townsend Group, Inc.
4920 Elm St., Suite 325
Bethesda, MD 20814
301-215-6710 Fax: 301-215-7704
(ads@reason.com)

Circulation Service
P.O. Box 526, Mt. Morris, IL 61054
1-888-REASON-8 (1-888-732-7668)
(subscribe@reason.com)

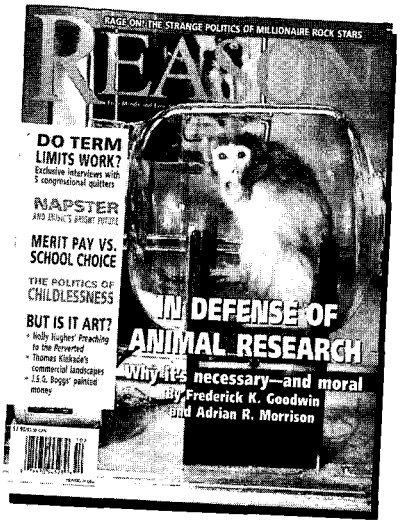
Reason is published by the Reason Foundation, a 501(c)(3) nonprofit educational foundation. Contributions to the Reason Foundation are tax-deductible. Signed articles in *Reason* reflect the views of the authors and do not necessarily represent those of the editors, the Reason Foundation, or its trustees; articles should not be construed as attempts to aid or hinder the passage of any bill before any legislative body. The claims and opinions set forth in paid advertisements published in this magazine are not necessarily those of the Reason Foundation, and the publisher takes no responsibility for any such claim or opinion.

Audit Bureau of Circulations Member

Reason Foundation
Trustees
Harry E. Teasley Jr. (Chairman), Thomas E. Beach, William A. Dunn, James K. Glassman, C. Boyden Gray, Neal I. Goldman, Stina Hans, Manuel S. Klausner, David H. Koch, James Lintott, Robert W. Poole Jr., Al St. Clair, Sarah A. O'Dowd, Walter E. Williams, Frank Bond (emeritus)

President Robert W. Poole Jr.
Vice President, Magazine Nick Gillespie
Vice President, Research Lynn Scarlett

Letters


RAGE ON! THE STRANGE POLITICS OF MILLIONAIRE ROCK STARS
DO TERM LIMITS WORK?
Exclusive interviews with 5 congressional quitters
NAPSTER
MERIT PAY VS. SCHOOL CHOICE
THE POLITICS OF CHILDLESSNESS
BUT IS IT ART?
IN DEFENSE OF ANIMAL RESEARCH
Why it's necessary—and moral
By Frederick K. Goodwin and Adrian R. Morrison

Animal Instincts

"Science and Self-Doubt," by Frederick K. Goodwin and Adrian R. Morrison (October), presents only one side of a multidimensional issue. Goodwin and Morrison refer to some "successes" in biomedical research that have stemmed from the use of animals, but they neglect the numerous failures. One only has to skim through C. Ray Greek and Jean Swingle Greek's recent book, *Sacred Cows and Golden Geese: The Human Cost of Experiments on Animals* (Continuum, 2000), to see some of these data.

The use of animal models often creates false hopes for humans in need. It's estimated that only 1 percent to 3.5 percent of the decline in the rate of human mortality since 1900 has stemmed from animal research. Early animal models of polio actually impeded progress on finding a vaccine. A major medical journal has called the war on cancer based on animal research a qualified failure. And over 100,000 people die annually from side effects of animal-tested drugs. It is also important to note that there are many people who believe that animals have rights but who do not condone violence.

As a biology professor, I believe that students do indeed "understand what the scientific method is really all about," but that they deeply believe that science can do a better job and that the numerous nonanimal alternatives that are available are a very promising option. Many are simply unhappy with the blatant abuse of animals in the name of science. Scientists should indeed be reflecting on their practices, and their self-doubt is understandable given the millions of animals used in research. Whether or not one believes that animals have rights, this is a deplorable state of affairs.

Marc Bekoff
Department of Biology
University of Colorado at Boulder
Fellow of the Animal Behavior Society
Boulder, CO

Frederick K. Goodwin and Adrian R. Morrison devote much of their article to discussing too-often overlooked data on the importance of animal research to human well-being. Yet since similar gains in knowledge could be had from involuntary experiments on human beings, arguments regarding the medical benefits of animal research are presumably moot if the *moral* arguments of the animal rights movement are correct.

It is thus disappointing that the most important element of Drs. Goodwin and Morrison's argument is also the most ill-founded. The authors claim that "rights stem from the uniquely human capacity to choose values and principles, then act on choices and judgment." Since, as they note, even the most intelligent animals lack this capacity, the concept of rights just doesn't apply.

Let us assume this account, undefended though it is, is the correct account of rights. Even if it succeeds in justifying animal research, it fails in a broader sense, for it justifies involuntary research not only on animals, but on human beings as well. If the reason animals lack rights is that they are incapable of "comprehending, respecting, or acting" upon rights, then infants, the retarded, and the

comatose (to name but a few) lack rights as well.

I believe there is a moral justification for certain sorts of animal research. But the idea that this justification can be made on the grounds that *all* human beings have certain rights which *all* nonhuman animals lack remains as undefended today as it was when philosopher Peter Singer criticized it over 20 years ago.

Matt Zwolinski
Department of Philosophy
Institutional Animal Care and Use Committee
University of Arizona
Tucson, AZ

In the spirit of REASON's commitment to clear thinking, the fallacies, non-sequiturs, and blind fundamentalism that pervade "Science and Self-Doubt" should be candidly identified.

Not only do these alleged supporters of science fail miserably to provide any balance in their assessment, but they repeatedly caricature their opposition, creating straw figures which purport to be adequate descriptions of complex and nuanced positions. What they affirm in concept—that we should think clearly—they deny in performance. In fact, their argument suggests they are confident that your readers are ignorant of issues and cannot think for themselves in a mature way.

Take their reference to "a campaign in New Zealand to give the great apes constitutional rights [by] the Great Ape Project, which seeks to award apes the same rights as those possessed by humans." Because The Great Ape Project seeks only certain fundamental protections—life, liberty, and freedom from torture—for gorillas, chimpanzees, orangutans, and bonobos, and not the right to vote, the right to travel internationally, etc., the authors' statement here is uninformed.

Further, the authors' fundamentalism, and indeed their superficial commitment to the humility implicit in scientific method, is betrayed by their abject failure to use scientific terminology. Humans are, scientifically speaking, great apes. The view that humans are not great apes and are separate from the animal kingdom had its origin in prescientific and religious thinking.

The authors owe this magazine's readership an apology.

Paul Waldau, D. Phil, J.D.
Executive Director
The Great Ape Project-International
Upton, MA

Those unfamiliar with animal rights ethics and with animal experimentation practice may find Frederick K. Goodwin and Adrian R. Morrison's article compelling. In contrast to their caricature, nearly all animal advocates oppose violence and they do not equate all humans and nonhumans. But they assert that, when it comes to pain and suffering, humans and animals should be considered equally. If infants, human mental defectives, and other vulnerable humans deserve protection from abuse, then nonhuman animals similarly deserve protection. In fact, many creatures, including members of many primate species, dogs, and elephants, display more intelligence than some humans and far greater compassion and altruism than most humans.

Animal experimentation does not even pass the "ends justify the means" test. As Dr. Neal Barnard and I argued in the February 1997 issue of *Scientific American*, the practice tends to be wasteful and frequently misleads investigators. Animal studies can neither prove nor disprove any theory about humans. At best, they can suggest theories about human conditions, but human clinical investigation has been and will remain a much more fruitful means of deriving theories relevant to human medicine.

Animal experimentation is inherently abusive, usually involving pain and suffering, always involving deprivation and death. Fortunately, in science, there are always many ways to address a given question. Dr. Barnard and I concluded that animal experimentation is a choice, and not a very wise or ethical one. If animals matter, we should choose other means of medical research.

Stephen R. Kaufman, M.D.
Co-Chair
Medical Research Modernization Committee
Cleveland, OH

"Science and Self-Doubt" accurately describes the tactics of the animal rights movement and its effect on medical research. The modern animal rights movement is an artifact of the war against Western values of freedom and progress whose foot soldiers have most recently been seen on the streets of Seattle, Philadelphia, Los Angeles, and Prague. The problem is not that animal rights extremists don't understand the processes of sci-

Libertarian Futurist Society

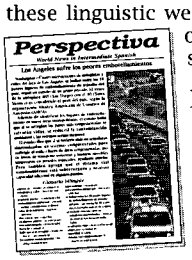
Join the LFS and vote for the Prometheus Awards for pro-freedom science fiction

"One of the best deals around. How else would I learn of the new SF books that I'd be most likely to want to read?" -- Robert Poole, Reason Foundation

89 Gebhardt Rd, Penfield, NY 14526
www.lfs.org

CONQUER SPANISH!

It's a battle learning another language. Attack your Spanish with ***Perspectiva*** or ***El Puente***. Vanquish boredom with these linguistic weapons - win the war on fluency with strong vocabulary.



Read Spanish with MORE comprehension and LESS frustration.

- **Spanish** at *YOUR* level - boosts comprehension!
- **Glossary** next to articles - improves vocabulary!
- **Spoken Idioms & Grammar** - increases fluency!

El Puente
High-Beginning Spanish
$39: 12 monthly issues

Perspectiva
Intermediate Spanish
$39: 12 monthly issues

SUBSCRIBE TODAY
or call for a **FREE BROCHURE** with sample articles & sample glossary.

EDUCATIONAL NEWS SERVICE
PO BOX 60478 - RES
FLORENCE, MA 01062-0478

www.ednews.com
(800) 600-4494

ence or the benefits derived from medical research. It is that these coercive utopians are determined to force a change in the moral and legal relationship of humans and animals by any means necessary.

Men like Goodwin and Morrison are to be applauded for their efforts to explain the moral basis for and practical necessity of using animals in medical research. But they, and we, must realize that animal rights extremists will not be moved by—and aren't interested in—dialogues of reason, as evidenced by the obscene attempt by PETA's Ingrid Newkirk to manufacture a moral equivalence between Hitler's concentration camps and chicken slaughterhouses.

In fact, as Drs. Goodwin and Morrison point out, the animal rights movement isn't much interested in the welfare of animals. National fundraising and publicity machines such as PETA and the Humane Society of the United States have a miserable record of support for local humane societies. Last year, PETA spent weeks "infiltrating" an underfunded local humane society in Portsmouth, Virginia, amassing "evidence of cruelty to animals," and pursuing a prosecution of the society's overworked and underpaid staff, forcing the shelter to spend about $12,000 of its annual $162,000 budget on legal fees to defend two employees who were eventually acquitted of all charges.

The animal rights movement is an exceedingly well-funded international movement with a comprehensive strategy which includes achieving political power. The Political Animal Lobby made the first-ever £1 million contribution to the Labor Party's successful 1996 campaign in Great Britain. Nor is the movement unsophisticated in the uses of power. The less flamboyant but equally determined Humane Society of the United States funds a national, multiyear campaign called "First Strike!" that pays researchers to "find" a link between animal cruelty, juvenile delinquency, domestic abuse, and other violent crime, with plans to have animal welfare officers, teachers, social workers, and law enforcement officials "share information" on juveniles who abuse animals in order to establish a "tracking system" to identify likely perpetrators of other violent offenses.

We may grant supporters of the animal rights movement the right to believe anything they wish about the proper relationship between humans and animals. What we cannot permit is their too frequent resort to misrepresentation, violence, and coercion. It makes no difference whether we lose our freedoms to an overreaching state or these ideological enemies of the future; the effect will be the same. Drs. Goodwin and Morrison need to keep fighting, and the rest of us need to start helping them.

David N. Narr
Virginia Beach, VA

Adrian R. Morrison and Frederick K. Goodwin reply: David Narr presents additional evidence of the dangers posed by the animal rights movement to our civilized society. He does not exaggerate and he rightly warns us that "we cannot permit their too frequent resort to misrepresentation, violence, and coercion." Some of the other writers, apologists for the animal rights movement, provide glaring examples of the first of these activities along with evidence of confused thinking.

In reference to Paul Waldau's letter, we said nothing about the phylogenetic placement of humans and great apes. Rather, we argued that as humans we are members of a moral community that can know right from wrong. We have special duties toward our fellow man and must consider the welfare of all animals very seriously as well. We are the only beings that can do the latter. The Great Ape Project does seek constitutional rights. Great apes cannot, of course, vote, because they cannot act responsibly; they do not know right from wrong. We have strong obligations or duties toward them when they are under our control, but that does not mean they have constitutional rights. As for apologies, those who engage in "misrepresentations, violence, and coercion" in order to impede life-saving medical research—and their defenders—owe a collective apology to all of humanity.

Stephen Kaufman predictably cites an article he and Neal Barnard wrote for *Scientific American.* He does not mention that one of us (Morrison) wrote a countering article in the same issue and then a rebuttal to the arguments presented by Drs. Barnard and Kaufman in the Web magazine *HMS Beagle* (biomednet.com/hmsbeagle/1998/25/people/op_ed.htm). We might also note that Dr. Kaufman was publicly chastised by none other than Albert Sabin, developer of the oral polio vaccine, for misrepresenting medical history, and Dr. Barnard was rebuked by the 1990 House of Delegates of the American Medical Association for the same reason.

Marc Bekoff offers us some illogic when he argues that "100,000 people die annually from side effects of animal-tested drugs." Actually, a company must test twice as many animals as humans on a particular drug before it is released for wider use. That unexpected side effects might appear after millions of doses of a drug have been taken by people following tests on animals and then *human volunteers* can hardly be blamed on the initial animal tests. Would he have us test millions of animals and humans first—and be willing to pay for the vastly more expensive drug? Would he be willing to stand in line before the first mouse, rat, or monkey when a new drug is tested? (The book by the Greeks to which Professor Bekoff refers offers more of the same.)

If Matt Zwolinski cannot reason that a human infant is worthy of more protection than a rat or a monkey, we cannot answer him.

Communicate with REASON

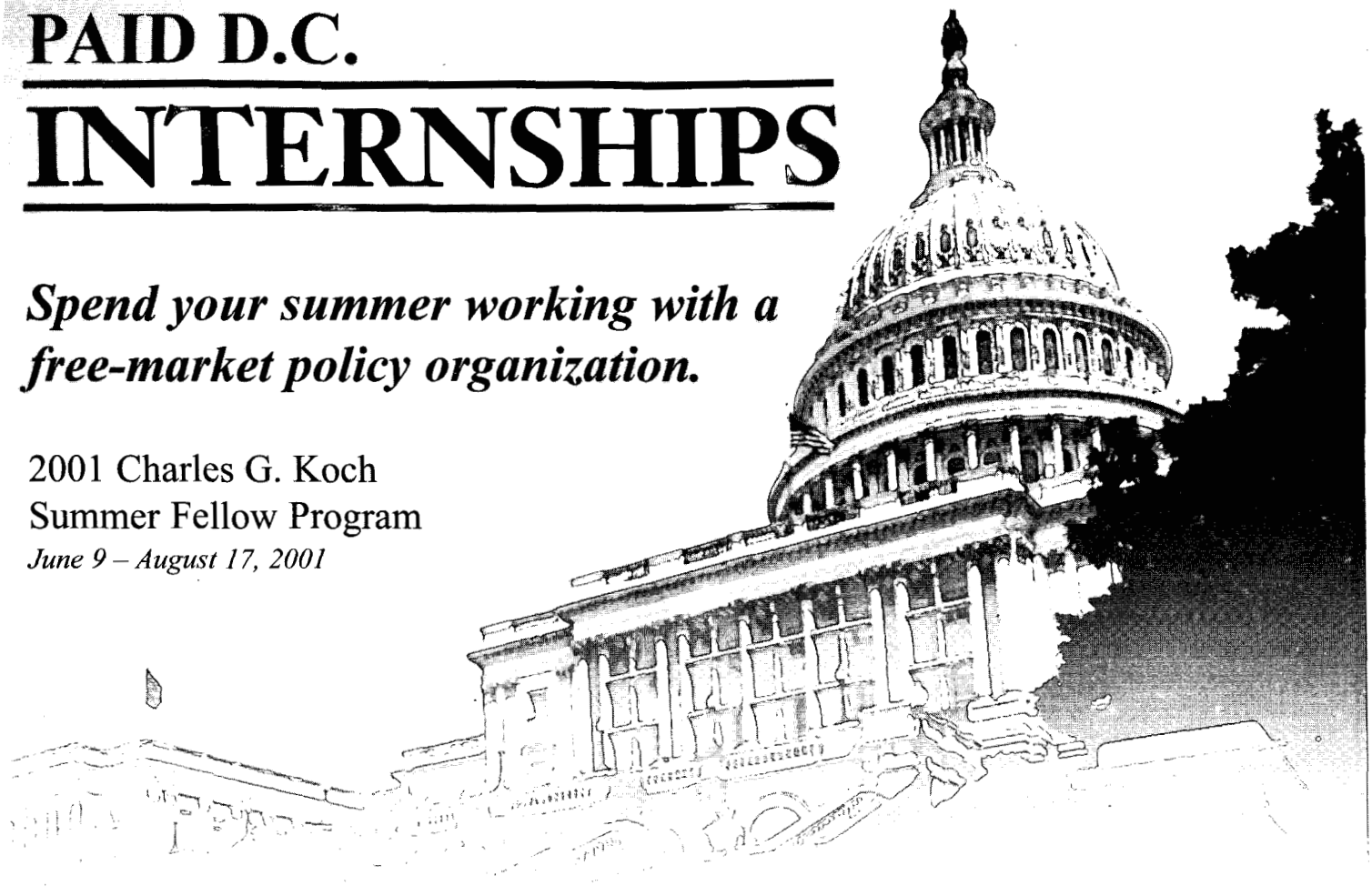
We appreciate your letters, typed double-spaced and limited to 250 words. Letters sent to REASON will be considered for publication (unless otherwise noted) and may be subject to abridgment or editorial comment. Any letter intended for publication must include the sender's name, address, and daytime telephone number. Letters may be sent to letters@reason.com or mailed to:

3415 S. Sepulveda Blvd., Suite 400
Los Angeles, CA 90034-6064

REASON NEWS

Walter Olson's column remains on hiatus but will return next month.

PAID D.C.
INTERNSHIPS



Spend your summer working with a free-market policy organization.

2001 Charles G. Koch
Summer Fellow Program
June 9 – August 17, 2001

Do more...

. . . in one summer than most people do all year. Through the Koch Summer Fellowship program, you can gain experience working with top policy experts, journalists, and academics while exploring market-based solutions to social and economic problems.

In addition to an internship, participate in policy analysis seminars, career workshops, and team projects. If you're looking for an internship that allows you to pursue innovative policy solutions, the Koch Summer Fellow Program is for you.

For anyone interested in public policy and free markets, there is no better experience.

- Public Policy Internship
- $1,500 Stipend
- Furnished Apartment
- Policy & Career Workshops

Apply at: ***www*.TheIHS.*org***
Application Deadline: February 15, 2001

INSTITUTE FOR HUMANE STUDIES
GEORGE MASON UNIVERSITY

Citings

Closing Time

By Sara Rimensnyder

You wouldn't think you'd need a pharmacist to buy a newspaper. Or a pair of pantyhose. Or a box of jelly donuts. But that's the situation in Connecticut, where state regulations require certain drugstores to shut their doors entirely if there's no druggist on duty. Now that an increased education requirement has caused a shortage of pharmacists, the law is inconveniencing customers and businesses alike. Neither the stores nor the state keeps track of shutdowns, so it's unclear how many shops have been affected. But anecdotal evidence suggests that employees at more than a dozen stores got an unexpected day off over the Labor Day weekend.

The closure requirement is an irksome remnant of the days when drugstores sold drugs and convenience stores sold snacks and periodicals. It's just one of many regulations dictated by Connecticut's Pharmacy Commission. For example, there's the "tech ratio": For every pharmacist, there can be no more than two technician assistants. The rule is supposed to enable pharmacists to make sure the technicians don't screw up when filling bottles, inserting cotton, and putting on caps. Such a requirement works well for pharmacists in theory: Like licensing, it restricts entry into the profession and keeps its practitioners in high demand. But in practice, now that pharmacists are spread thin, it burdens them with grueling hours and understaffing.

The increase in the education requirement—part of a nationwide professionalization drive—is directly responsible for the sudden pharmacist shortage. Connecticut pharmacy schools didn't graduate any classes this year; would-be graduates instead have to stick around for a sixth year. At the same time, fewer students are enrolling in pharmacy schools. Neighborhood pharmacist has never been a glamorous career choice, and the position's growing reputation for stress probably isn't adding any allure. Nor is the extra year of training.

Grace Nome, a lobbyist for the industry group Connecticut Chain Drug Stores, questions whether the state needs such inflexible restrictions. She mentions a rule mandating that pharmacies stay open for at least 35 hours per week, a measure designed to protect the consumer. "In all honesty, you can only make a customer mad so many times, and then they're not coming back," she says. Nome is baffled by the tech-pharmacist ratio, which she sees as placing an unneeded burden on working pharmacists. "These pharmacists need relief," she says. "The tech ratio should be increased immediately to 3 to 1." After all, how many pharmacists does it take to screw a cap on a bottle?

Hands-On Experience

By Michael W. Lynch

The disability access movement may soon have another victory under its belt. In September, Kenneth McGrath, owner of an English lap dance lounge called the Pussycats Club, petitioned local authorities for an exception to the strict no-touch clause in his establishment's license. The proposal originated with two blind attendees at a stag party who felt that touching the girls would give them a better feel for the contours of the dancers' art.

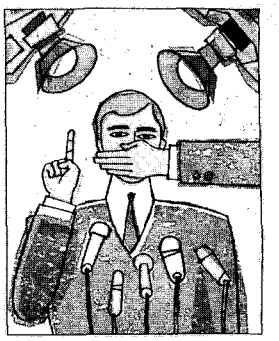
"Given their disability," McGrath told London's *Daily Telegraph*, "they felt controlled touching ought to be permitted for registered blind persons only and with the lap dancers' consent." A survey of the club's employees found

Balance Sheet

By Jeff A. Taylor

ASSETS

△ △ △ △ △ △ △ △ △ △ △ △ △ △ △ △

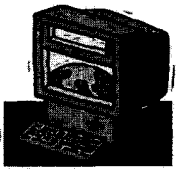


▲ Leak Plug. President Clinton vetoes a wacky move to create an official secrets act punishing anyone who "leaks" classified info. The law would have relieved prosecutors of the burden of showing that a leak actually harmed national security.

▲ Silicon Rainbow. A study in the journal *Demography* finds that diverse culture, including a robust gay community, predicts how much tech-boom local communities see.

▲ Block Party. Stodgy 68-year-old Lego releases the source code to its popular Mindstorms robot-building blocks. Adult coders are delighted and another generation of geeks ensured.

▲ Plan Maryland. Amish and Mennonite farmers refuse to participate in Maryland's tobacco eradication program, calling it shameful welfare. Tobacco-settlement money pays farmers $1 per lb. per year for a decade to forego growing.



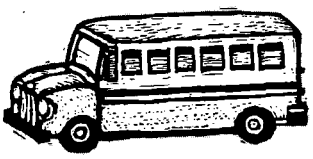
▲ Filter View. Hacking gets backing from the U.S. Copyright Office, which rules that showing how so-called Web filtering software works does not break the law. The ACLU argued that keeping blocked sites secret violated free speech.

▲ Millennial Masala. Modern life trickles down to women in India as they fill tech jobs in and around thriving Bangalore. A local association of women entrepreneurs teaches village women to set up businesses like small computer centers where customers can log on for a fee.

▼ **Driving Phoned.** U.S. lawmakers rush to outlaw driving while talking on a cell phone despite paltry evidence that it causes accidents. Up next: a ban on talking to passengers or singing with the radio?

▼ **Log Rolled.** Election officials and judges move to squash Nader-trader Web sites, arguing private deals to swap Gore votes for Nader votes across state lines violates the law. But when Congress does such swaps, it's called statesmanship.

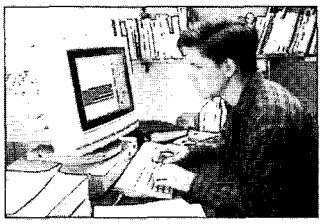
▼ **Bad Choices.** Overreaching school choice initiatives in Michigan and California keep the idea a total loser in ballot questions. Confirms that choice requires that oh-so-rare element—political leadership.



▼ **L. Ron Hubbub.** Microsoft bows to German government pressure to remove a defrag utility from Windows 2000 there. The feature was designed by a firm with a Scientologist CEO, and Scientology is viewed with hysteria in Germany.

▼ **Vodka Chronic.** Masked police in Moscow storm the offices of Smirnov as part of a dispute over the company's ownership. Guns, threats, and squatting often determine ownership in Russia's new economy. Whatever it is, it ain't capitalism.

▼ **Tech Trough.** Surprise! Big corporate players line up behind tax breaks for closing the mythical digital divide. Telecom firms and fiber optics maker Corning push for wiring tax credits; Gateway and others want a new break for donating used PCs.



LIABILITIES

that 11 of the 15 dancers would consent, under certain restrictions. The only thing standing in the way of 13 people's happiness is the local government, which has promised to consider the request.

Artistic License

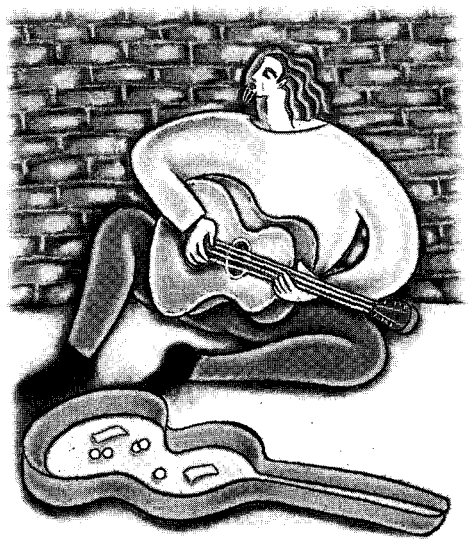
By Brian Doherty

The college town of Gainesville, Florida, awash in small, quasi- or unprofessional local bands, recently realized it was sitting on a potential gold mine in occupational licensing fees. Since 1953, a local statute has listed "artist"—no further elaboration given—as a "professional" category required to pay a yearly occupational licensing fee to the city. The current yearly fee is $100, same as for a lawyer.

In September, the city's Department of Cultural Affairs contacted bands with whom it had contracted for downtown public concerts, notifying them of a meeting to discuss a new enforcement policy for anyone making money as a musician. Someone started spreading the notice on the Internet, and over 150 local musicians showed up.

Gainesville musician Alyson Carrel says, "Not only were the city and Department of Cultural Affairs unprepared for this type of turnout, but they were unprepared to answer even the basic questions raised. When asked the legal definition of an artist, the city and Department of Cultural Affairs were unable to answer. At one point they said all performers—for instance, all six members of PopCanon, my band—would have to pay an occupational license fee of $100 apiece, each year they are doing business. After further questioning, they changed their minds, saying, Oh no, only the organizer for the band, the one who books the show and receives payment, would need to pay."

Other questions—for instance, are club owners responsible for checking the licenses of the bands they hire?—also went unan- ▶



QUOTES

"I feel like **I shouldn't have been called into his office because of my costume** when other people dressed as demons weren't. **There was a kid dressed as Hitler, and nobody said anything to him**, either."
—Gabriel Koppelberger, 17, of Tennessee's Page High School, who was sent to the principal for wearing a Jesus Halloween costume, in the November 3 *Tennessean*

"In one of the narrowest presidential votes in U.S. history, either George W. Bush or Al Gore was elected the 43rd president of the United States Tuesday, proclaiming the win 'a victory for the American people and the dawn of a bold new era in this great nation.'...**Bush or Gore attributed his victory to his commitment to the issues that matter to ordinary, hard-working Americans.** Throughout the campaign, the Republican or Democrat spoke out in favor of improving educational standards, protecting the environment, reducing crime, strengthening the military, cutting taxes, and reforming Social Security. **He also took a strong pro-middle-class stand, praising America's working families as 'the backbone of this great nation.'"**
—*The Onion* (theonion.com), November 8

BRICKBATS

◆ Police in Little Rock, Arkansas, are nothing if not efficient. They picked up 70-year-old Betty Deislinger at a meeting of the city's historic commission. Her crime? She refuses to remove burglar bars from her house, which was built in the 1870s, violating an ordinance governing the historic district in which she lives. She faces a fine of $10 to $500 a day until she complies with the law.

◆ The U.S. Forest Service apparently feels the best way to crack down on marijuana-growing in Northern California's Mendocino National Forest is to harass Latinos. Rangers have been instructed to "develop probable cause" for stopping cars leaving the forest; if "the vehicle has Hispanics inside," its passengers must be interrogated, even if no drugs are found.

◆ In Maryland, police are supposed to turn any cash seized from alleged drug dealers or gamblers over to the county treasury. But it seems that the sheriff's department in Prince George's County has been hiding thousands of dollars while lobbying for a change in the law that would allow it to keep the money. Some $45,000 not found during an audit was later turned over to the treasurer after a sheriff's department employee tipped off authorities. Now the whistleblower is being fired.

swered. In the face of strong citizen objections, the city claimed state law gave it no leeway in enforcement. But Gainesville musician and lawyer Brian Kruger says that's nonsense. The state merely allows the city to charge occupational licensing fees, he explains. It doesn't define the categories for which the fee must be charged. The "artist" category is a local innovation, not a state mandate.

"If they wanted to make a big deal and enforce it, they'd get their butt kicked in court," Kruger says. "If an ordinance doesn't provide a definition and contains penalties, the ambiguity would likely be construed against the government agency. There are different definitions of *professional*, and they'd have to pick the least restrictive one that applied to the fewest people. And no one makes their full living as a musician here."

Gainesville's Department of Cultural Affairs has refused to comment, saying it is awaiting guidance from the state attorney general's office

DARE Aware

By Jacob Sullum

Critics of Drug Abuse Resistance Education, the program in which police officers tell kids to just say no, have long been frustrated by DARE's ability to thrive on anecdotes and enthusiasm. Despite the lack of credible evidence that it does what it's supposed to do, it is by far the most widely used anti-drug curriculum in the country, reaching more than 20 million students each day.

But DARE's 17-year free ride may be slowing down. Last summer, calling DARE "a fraud on the people of America," Salt Lake City Mayor Ross C. Anderson pulled it out of the city's schools, saying it should be replaced by a program that has actually been shown to reduce drug use. "For far too long," Anderson wrote in *The Salt Lake Tribune*, "our drug-prevention policies have been driven by mindless adherence to a wasteful, ineffective, feel-good program."

Although DARE is still used in about three-quarters of U.S. school districts, Salt Lake City's is one of several to abandon the program in recent years. While condemning Anderson's decision, DARE supporters were unable to rebut his charge that published, peer-reviewed research indicates the program is ineffective at best.

In an op-ed piece for *The Deseret News*, DARE America President Glenn Levant said "we are more than willing to debate the efficacy of DARE" but offered no evidence that the program works. Kathy Stewart, president of the Utah DARE Officers Association, told the *Tribune*: "I don't have any statistics for you. Our strongest numbers are the numbers that don't show up." And Tibby Milne, executive director of the pro-DARE Utah Council for Crime Prevention, confessed that "it's very hard to say how many kids do not use drugs because of DARE. We're

☛ "What the Pentagon is to the military-industrial complex and the White House is to the political structure, advertising is to the free market. A highly visible symbol of American 'capitalism,' often loud and garish, advertising receives more than its share of abuse. Vilified by radical, liberal, and hip-capitalist alike, it has its detractors, especially on Madison Avenue. As one ex–creative director said, 'For a while it was fun, but in the end did I really care who sold the most tooth paste?'"

—Lanny Friedlander, "In Defense (?) of Advertising"

☛ "Most opponents of SST subsidies characterize the program as a vast boondoggle to benefit a small minority of jet-setters at the expense of everybody else. They are right. But what many of them fail to realize is that the entire commercial aviation industry is just such a creature of the state—a vast empire which mouths the slogans of capitalism and free enterprise, while it is being lavishly supported and protected by the state—with your money."

—Robert Poole Jr., "High Jacking the Taxpayer"

☛ "[On a recent cover,] *National Review* freely proclaimed...: 'Did the United States destroy the American Indian? No...but it should have.' The man who wrote that ought to be ashamed of himself. His character is revealed for everyone to see. A friend of mine used to tell such persons, 'Your soul is showing!'"

—Rosalie Nichols, "America the Beautiful: On Whose Land?"

trying to get that information."

The response to Anderson's decision from the local press was largely supportive. "While the decision was not popular, Anderson appears to be on solid ground," *The Deseret News* said. "DARE is a popular program with broad support," said an editorial on KSL-TV, "but it certainly isn't sacrosanct. Along with Mayor Anderson, communities should dare to question DARE."

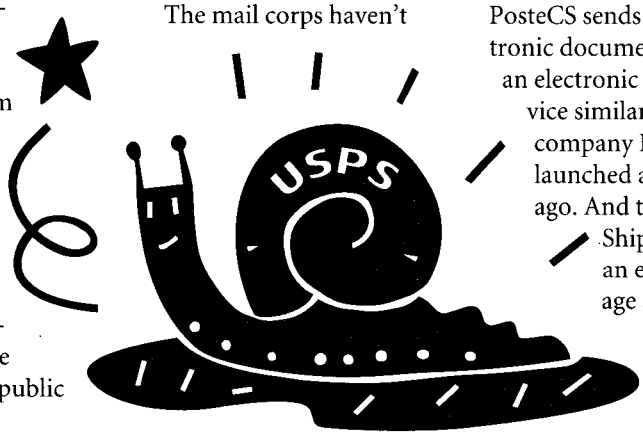
USPS.com

By Sara Rimensnyder

Post office bigwigs must have finally heard one "snail mail" crack too many. Or else they listened up when analysts told them that an upstart technology called e-mail was going to gnaw Pac-Man-style into their $35 billion in first-class mail revenue.

On July 31, *The Wall Street Journal* reported that the U.S. Postal Service had plans—big plans—to assign everyone in the country a free "usps.com" e-mail address, to be used either as an alias or as a new account. The address would begin with a person's initials, followed by her nine-digit zip code and the last two numbers of her street address.

The postal service has refrained from releasing such details as the date, or even the year, that the program would launch. But it has hinted at some rationales for the scheme, including establishing the postal service as the primary communication ferry between the government and the public and helping direct marketers seamlessly shift operations to the electronic world.



The mail corps haven't completely ignored the Internet before now. Three services are already in place. PosteCS sends secure electronic documents. Ebillbay, an electronic payment service similar to the private company Paypal, was launched a few months ago. And then there's Shipping Online, an electronic postage service. Last September, the post office launched another service, allowing customers to send electronic documents to be printed, stuffed into envelopes, and delivered to a mailing list for 41 cents per letter.

Meanwhile, private electronic commerce firms and hundreds of free e-mail providers already have services on the Web identical to those running or in the works at the post office. Rick Merritt, executive director of the Web site postalwatch.com, won- ▶

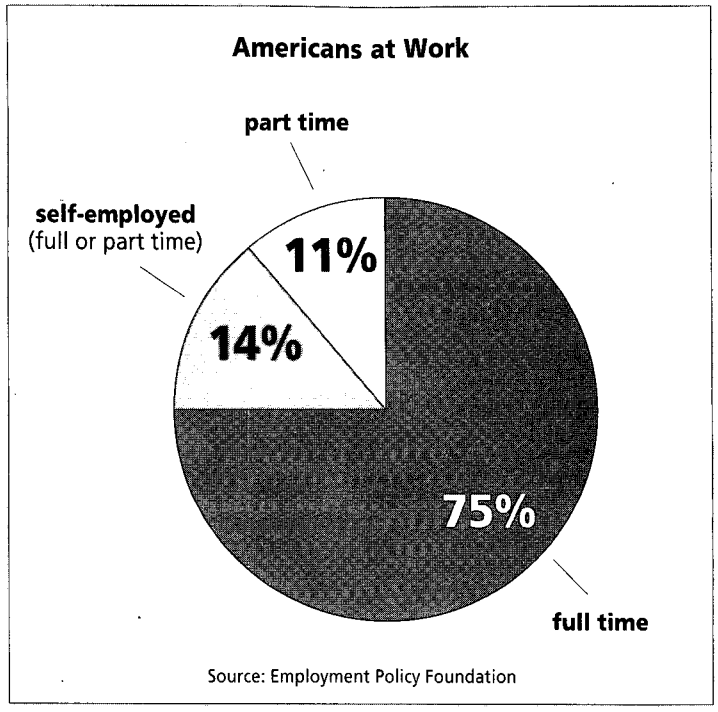
DATA

Same as the Old Boss

By Michael W. Lynch

We've heard a lot about the rise of a "free-agent nation" in today's fast-paced, tech-driven economy: Fans find it liberating, and foes fret about the disappearance of stable, full-time jobs. But a new study by the industry-funded Employment Policy Foundation finds that the more things change, the more they stay the same. In 1955, 75 percent of employed Americans worked a traditional full-time job, 10 percent worked part time, and 15 percent worked for themselves. In 2000, 75 percent of Americans still paid their bills with wages from a traditional full-time job.

Some things have changed. Today's free agents are more visible. "In the 1950s and 1960s, there were a lot of merchants, farmers, and tradespeople among the self-employed," says Ron Bird, chief economist at EPF. "The nature of the self-employed is now more professional- and consultant-oriented." And since the size of the labor market has more than doubled since 1955, there are more free agents, even if their proportion of the work force is holding steady. Not that there's anything wrong with that. Says EPF President Edward E. Potter, "From every perspective—schedule, job arrangement, or expected tenure—it is clear that the American labor market is providing the jobs that people want, that fit their career needs, and that accommodate their lifestyle."



BRICKBATS

◆ John Yount, a member of the Metro Nashville Teachers Association's political action committee, supported George W. Bush for president. When he found out the union planned to show a Gore campaign video at a teachers' conference, he said that Bush deserved equal time. Nothing doing, the union leaders replied. So Yount wrote to conference attendees about the disagreement, enclosing a Bush brochure. According to Yount, the MNTA then told him it would be a violation of union rules for him to campaign for a candidate they didn't support. That includes putting a bumper sticker on his truck or a sign in his yard, or even talking about his candidate in public.

◆ In Richmond, Virginia, arsonists torched a banner honoring Confederate Gen. Robert E. Lee. The Sons of Confederate Veterans are demanding that the police treat the offense as a hate crime.

◆ Where It's At, a bar in Rangely, Colorado, printed T-shirts that showed two cartoon aliens in the act of copulation. In response, the town government shut the business down for five days, including the opening days of deer hunting season, the bar's busiest weekend of the year. Under the liquor code, taverns aren't allowed to depict sex acts in their advertisements or decorations.

—Charles Oliver

ders, "What makes the postal service think they're going to be more attractive than a private concern like Paypal?"

Drug War Doctors

By Michael W. Lynch

While Congress frets about how insurance companies use medical information, the Supreme Court is considering a case with far more worrisome implications. *Ferguson v. City of Charleston* asks not just whether some people have the right to take secret peeks at your health but whether they can compel you to provide medical evidence against yourself.

At issue is a drug abuse intervention program hatched in 1989 by the Charleston cops and the Medical University of South Carolina. Under it, pregnant women seeking prenatal care were tested for cocaine with neither warrants nor the women's consent. Originally, if women tested positive, they were arrested for child neglect or for distributing drugs to a minor, sometimes just hours after giving birth. In 1990 the program was changed to offer drug rehabilitation before sending new or expectant mothers to the slammer.

Ten women are challenging the program on the grounds that, by neglecting to establish probable cause and secure a warrant before searching them, the health care workers who cooperated with the police violated their Fourth Amendment right to privacy. The U.S. Court of Appeals for the 4th Circuit found the searches constitutional under a "special needs" exemption that the women's attorneys say leaves pregnant women with less constitutional protection than other Americans—a situation they asked the Supreme Court to correct in October.

The Center for Reproductive Law and Policy, the public interest firm that is representing the women, points out that the program is not just bad law: It's counterproductive policy. Once word gets around that going to the doctor can mean going to jail, some pregnant women will shy away from important prenatal care. "I will never trust a doctor again," says Lori Griffin, who was arrested in 1989 during such a visit and spent the last three weeks of her pregnancy in jail. "They tormented me."

Child Proof

By Sara Rimensnyder

Employees of a Head Start program in Cleveland found a surefire way to recruit the most well-behaved youngsters: They invented make-believe kids. Faced with flagging enrollment, employees of the Ministerial Day Care Association, a nonprofit provider, padded 1997 class rosters with more than 60 fake names—enough extra toddlers to bring the program an additional $250,000 in state and federal funding, the Cleveland *Plain Dealer* reported last fall. Former employees informed state and federal officials that the ruse was encouraged by the association's board of trustees, all of whom were local ministers. (The ministers responded by suing eight workers for character defamation.)

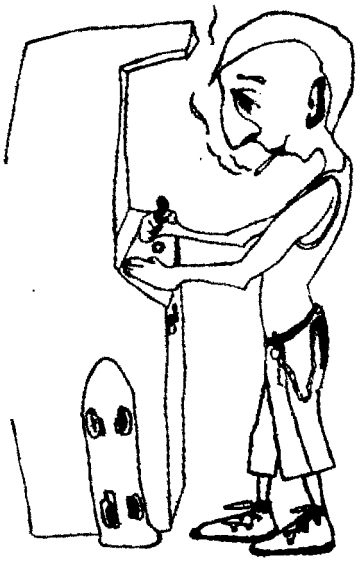
As of press time, the association still hadn't produced records documenting the services it insists it provided to approximately 1,600 children in 1997. In a letter, association officials informed investigators that the files were lost, destroyed, or stolen.

Head Start fraud certainly isn't unheard-of. But rarely is it so creative. The Cleveland scandal may be matched only by the industrious director in New York who embezzled a quarter million in Head Start funds in 1999, to subsidize a film studio, a record company, and a clothing business.

Saving Indianapolis

By Charles Paul Freund

Is Indianapolis safe yet from the menace of arcade video games? Certainly, the town is doing everything it can to protect itself. As of September 1, any coin-operated game that featured sexual content or graphic violence was supposed to be labeled accordingly. In addition, such machines were to be kept at least 10 feet from games suitable for families (if there are any). The sex-and-violence machines would be separated from their G-rated brothers by a curtain or a wall, so as to make them



completely irresistible to minors.

OK, the part about making them irresistible was a joke; the city wanted the machines to be hidden so minors wouldn't be able to see them. That's a joke, too, but at least it's Indianapolis' joke.

The punch line, of course, would come at the expense of arcade operators. They could be fined $200 per day for violating this ordinance. If a business is cited for three violations in a year, the city lifts its license.

Before this ordinance was able to save Indianapolis, however, the game industry sued. Although the city won the first legal skirmish, the industry has asked for an injunction. Hearings were set to begin after Thanksgiving, with a stay in effect until then.

This is a remarkably late battle in the 20-year-old video game wars, and it is taking place just as Sony's PlayStation2 is beginning to sweep the country. PlayStation2 allows people to engage in video game mayhem in their own homes, with impressively realistic graphics, and to do so without labels or intervening curtains or walls.

It's a miracle, or at least a wonder, that Indianapolis has survived this long, given that arcade games have been threatening the nation's youth for decades. Pinball, for example, may not have had graphic-violence problems, but any time one or more people are observed enjoying themselves, office-holders understand that it is their grave duty to do something about it.

Thus, pinball was often banned because it was perceived as a mob-controlled game of chance. Indeed, it was "a vicious racket" that "bleeds millions of dollars each year from youngsters." It "fleeces children of their carfare, their lunch money, their allowances, and in some cases drives them to crime to obtain the funds for their craze." Or so said *Better Homes and Gardens* magazine back in 1957.

Such insights got pinball banned in many communities over the years, at least for a while. Which probably explains how the country survived at all. ◆

SOUNDBITE

Labor Pains

By Sara Rimensnyder

Leo Troy

"Freedom of association is a right under severe, often buckling pressure when workers in the United States try to exercise it." That's the conclusion of *Unfair Advantage*, a new study commissioned by Human Rights Watch (available online at www.hrw.org/reports/2000/uslabor). According to the report, employer impunity and U.S. law have increasingly deterred workers' attempts to unionize, in flagrant disregard of international human rights law.

But the report doesn't discuss labor's most significant stumbling block: Unions have failed to respond to workers' changing needs in the modern economy. So argues Rutgers University at Newark economist Leo Troy, a feisty, longtime, and prescient analyst of unions. "I've been saying that unions were declining long before it was generally believed....At this point in my life, I don't feel a great need to be polite," Troy, well into his 70s, told *Rutgers Focus*. Assistant Editor Sara Rimensnyder interviewed him by phone in October.

Q: Is Human Rights Watch correct that union busting by employers is on the rise?
A: I say [HRW] is wrong, but let's assume [the report] is right about the increase in labor violations, just for the sake of argument. Since 1970, private sector unions have lost almost 50 percent of their membership. It's baloney to attribute this to employer opposition. Employer opposition only has one application, in organizing the unorganized. Many people mix up the loss of unionism in *existing* labor-management relationships and efforts by unions to organize the unorganized.

People never discuss *employee* opposition to unionism. There was a private poll done in 1984 by Lou Harris on behalf of the AFL-CIO. He found that 65 percent of nonunion workers said they would not vote for a union in a secret ballot. The top reason was that the workers felt the unions had become irrelevant. They felt they didn't need a union to solve their problems. "Fear of the employer" ranked near the bottom of the list. That was a kick in the solar plexus from the standpoint of the unions. And that was '84. Those sentiments would be even stronger now.

Q: Do U.S. laws adequately protect unions?
A: Every single G-7 country—and above all, Canada—has seen a decline in private sector unionism. Canada has much more pro-union legislation than the United States; pro-union people say we have to copy Canadian labor law. But if the Canadian law is unable to prevent the decline, why should it make a difference if the U.S. followed suit?

Q: Is there any future for collective bargaining?
A: In the book I'm writing now, *Twilight for Unionism*, I make clear that twilight doesn't mean extinction. Unions will remain important in certain private industries in the United States, like the automobile industry, the steel industry, and the railways.

All Losers' Night

In which our man in Washington desperately cruises for losers on Election Night and learns from experts how the new president should—must!—govern

By Michael W. Lynch

Subj: Looking for losers in all the wrong places
Date: 11/08/00
From: mwlynch@reason.com

Pick your cliché to describe Election Night in D.C. "It's a nail biter," a weary fellow at the Democratic National Committee bash at the Mayflower Hotel told me. At the Republican's party, an Arlington lawyer put it more colorfully: "Tighter than a piece of coal in Shannon Doherty's ass."

I spent the night and much of the early morning hopping from party to party in search of bad news. There's always plenty of it, since with elections somebody has to win. My goal was to spend the night with the losers. Actually, I spent most of the night assuming I was a loser, since I had bet $200 that Gore would take the White House and $50 that the Dems would take back the House.

My first stop was the DNC bash at the Mayflower Hotel, where I picked up my press credential, purchased a $5 Bud Light, and soaked in the scene. It was early and too cheery for my taste. At 7 p.m., CNN said Georgia and Virginia were too close to call, and the room erupted in cheers. Vermont went to Gore. "Big surprise," said one cocky fellow when we learned that Bush had secured South Carolina.

Things were far more tense a short walk away at the Capital Hilton, where the RNC was throwing its bash. "We expected to lose Florida," explained Republicanoid radio host Armstrong Williams. "But we're going to win Pennsylvania." Early in the evening, things were gloriously grim at the RNC party. In line for a $4 beer, a woman, upon learning I was press and had once lived in California, confided how she too once lived there. "I left California because the Mexicans were taking over," offered the fiftysomething bottle blond, reminding me why I'm not a Republican.

RNC Chairman Jim Nicholson introduced the emcee for the night, a comedian who doesn't use four-letter words (even on Election Night). Not surprisingly, he was a comedian in name only. "He hasn't tickled my funny bone yet," said a young guy who nodded to the band and asked, "Why do Republicans always get white bands who play Motown all night?" But it wasn't the comedian or the band that was bringing down the party. It was the fact that CNN and other networks had at that point called Florida for Gore. Michigan went the V.P.'s way as well, and by 9 p.m. it looked like an early wrap for Gore.

It was time to catch a cab to Republican operative Grover Norquist's party, where a committed group of conservative activists would surely be bumming in their beer.

"It's closer than we'd like it to be," Grover admitted as he emptied a kitchen trash can at 9:30 p.m. "I don't see how you can call Florida with 600,000 absentee ballots out." I grabbed a beer and followed Grover upstairs, where former Speaker Newt Gingrich was watching the returns. The often talkative pol wasn't saying much as he watched with his third wife.

The nadir of the night for the GOP came at 9:50 p.m., when someone announced that New Mexico had gone to Gore. Five minutes later, CNN had put Florida back into play. "We're taking back Florida one geriatric at a time," exclaimed one merry, and very drunk, conservative.

Grover's was now too cheery, so I caught a cab back to the DNC party, where folks were sure to be grieving. "If it comes out that Nader caused Gore to lose, I will go to Nader meetings and throw tomatoes," D.C. lawyer Mike Castellano told me. Echoed Georgetown law student Rachel Entman, "I want to know how Nader feels if he single-handedly screws up the country." (My hunch: Pretty damn swell.)

It was a bad night in many respects for Democrats, especially locally. By 1 a.m., the announcement came that they wouldn't take the House. Though a dead Democrat would beat a live Republican in Missouri (they don't call it the Show Me State for nothing), Virginia Sen. Chuck Robb, the profligate son-in-law of LBJ, was a goner. The ballroom was emptying out so I headed back to the RNC to see how they were holding up in apparent victory.

"What's up with the bullshit in Florida?" asked Gen-X Republican operative Mario Lopez, who was glued to the TV at the RNC party. "They won't call it with 93 percent of the precincts reporting." Well, "they" did call it for Bush, at approximately 2:15 a.m. And then they took it back at 4:06 a.m. Gore was understandably not willing to concede the lifelong ambition of at least two generations of his family.

As the sun broke over the Potomac

HENRY PAYNE

and the ghost of Rutherford B. Hayes laughed somewhere, CNN put the electoral count at 249 for Gore and 246 for Bush. The worst part of all this waiting, I thought, was that one of these guys was eventually going to win. I consoled myself with the idea that I might not have spent the night with a loser after all.

Subj: Bad news for Gore—and for the rest of us
Date: 11/09/00
From: mwlynch@reason.com

The theme of the day, according to Brookings Institution fellow and *Washington Post* columnist E.J. Dionne, was "Honey, who blew up our electoral system?" If you want a digest form of the arguments for expanded government you'll be hearing over the next few years, this influential D.C. think tank is the place to go.

I went there yesterday to check out a standing-room-only panel on where we go from here. Even a few minutes spent not knowing America's ultimate leader is scary as hell for the good-government liberal folks at Brookings (and many others in this one-company town). So no one smiled or chuckled, much less applauded, when Dionne said the presidential election had produced "a serious crisis of legitimacy in our government."

Thomas Mann, another Brookings fellow, pointed out that we may end up with a president who lost the popular vote and won the electoral vote mostly because a bunch of geezers in Palm Beach can't read a ballot. "If nothing else changes, we will all know that Al Gore in effect won Florida," pronounced Mann. "But George Bush will be declared the winner of Florida and become the president of the United States."

Whether that constitutes a "crisis" is a judgment call. Here's the real thing: If the old ladies from Palm Beach who were screaming on MSNBC last night are in fact incapable of reading a ballot properly, they are definitely too infirm to be driving to the polls or anywhere else in the Sunshine State. They pose a more immediate danger to fellow citizens as drivers than as voters. Accidentally electing a guy who has his own driving problems just doesn't compare.

Mann discounted the split between the popular and electoral votes as no big deal. "We have a constitutional system and the rules of the game call for a majority of the electoral college." In fact, he seemed to call on Al Gore to pull a Richard Nixon, circa 1960, for the good of the country. Tricky Dick, said Mann, "did an honorable thing when he conceded the election even though there were questions raised about the legitimacy of the count in Illinois and Texas, two states that, had they gone Republican, would have made Richard Nixon president of the United States. It may well be that Al Gore is going to have to suck it up and concede the election to George W. Bush."

The worst part of all this waiting, I thought, was that one of these guys was eventually going to win.

That was the bad news for Gore—everyone on the panel basically assumed a Bush presidency and then offered advice on putting together a governing coalition. The bad news for the country is this: Their idea of a governing coalition is one that delivers more government.

"If Democrats sense that the first unified government in 48 years is trying to go full-speed ahead with an agenda that seems not to have been embraced enthusiastically by the electorate, I can imagine them getting ugly and ornery," said Mann, obviously worried about seeing David Bonoir (D-Mich.), Sheila Jackson Lee (D-Texas) and Jerrold Nadler (D-N.Y.) on the yack shows at the same time he's angling for administration jobs for his liberal friends. "It may make sense, if Bush is ultimately certified as the president, to think creatively about his Cabinet appointments, appointing some Democrats there."

"The next Congressional Budget Office forecast may project a surplus that is even larger than what we had in the campaign," prophesied Robert Litan, Brookings' vice president and its director of government studies. He stumped for a compromise based on the old "honor among thieves" code: "Money makes the world go round. And if in fact there's more money, there's room for a deal, where Republicans get some of theirs, Democrats get some of theirs, and you have a happy scenario worked out." Happy, I might add, for those in D.C. spending the money, not for those outside actually earning it and sending it to the feds.

"We can either have gridlock or bipartisanship," declared Isabel Sawhill, another Brookings fellow. She was charged with considering the election's implications for domestic policy, but her most interesting comments were a novel interpretation of the apparently total GOP victory. At the very moment the Republicans had managed to keep control of Congress and win the presidency, explained Sawhill, "the conservative revolution that many associate with Ronald Reagan, in both an ideological and intellectual sense, has lost a lot of earlier energy."

Her advice to Bush was to scrap his income tax cut—surprise!—and instead cut the payroll tax that funds Social Security (on condition that folks save the money). Such advice is Machiavellian to the max, since it would allow Sawhill, her colleagues at Brookings, and other liberals to attack Dubya for gutting the system, hence improving the electoral chances of Democrats in 2002.

Whatever. Maybe by then we'll at least know who the president is. In the meantime, I'm relaxing and enjoying these days without a federal budget or even a president-elect. Taxes aren't going up and there are no new programs in the offing. That may scare the hell out of the bleary-eyed folks at Brookings, but it's fine by me.

Or: Why we should learn to stop worrying and love genetically modified food

By Ronald Bailey

GELUNCH

Ten thousand people were killed and 10 to 15 million left homeless when a cyclone slammed into India's eastern coastal state of Orissa in October 1999. In the aftermath, CARE and the Catholic Relief Society distributed a high-nutrition mixture of corn and soy meal provided by the U.S. Agency for International Development to thousands of hungry storm victims. Oddly, this humanitarian act elicited cries of outrage.

"We call on the government of India and the state government of Orissa to immediately withdraw the corn-soya blend from distribution," said Vandana Shiva, director of the New Delhi–based Research Foundation for Science, Technology, and Ecology. "The U.S. has been using the Orissa victims as guinea pigs for GM [genetically modified] products which have been rejected by consumers in the North, especially Europe." Shiva's organization had sent a sample of the food to a lab in the U.S. for testing to see if it contained any of the genetically improved corn and soy bean varieties grown by tens of thousands of farmers in the United States. Not surprisingly, it did.

"Vandana Shiva would rather have her people in India starve than eat bioengineered food," says C.S. Prakash, a professor of plant molecular genetics at Tuskegee University in Alabama. Per Pinstrup-Andersen, director

KERRY P. TALBOTT

general of the International Food Policy Research Institute, observes: "To accuse the U.S. of sending genetically modified food to Orissa in order to use the people there as guinea pigs is not only wrong; it is stupid. Worse than rhetoric, it's false. After all, the U.S. doesn't need to use Indians as guinea pigs, since millions of Americans have been eating genetically modified food for years now with no ill effects."

Shiva not only opposes the food aid but is also against "golden rice," a crop that could prevent blindness in half a million to 3 million poor children a year and alleviate vitamin A deficiency in some 250 million people in the developing world. By inserting three genes, two from daffodils and one from a bacterium, scientists at the Swiss Federal Institute of Technology created a variety of rice that produces the nutrient beta-carotene, the precursor to vitamin A. Agronomists at the International Rice Research Institute in the Philippines plan to crossbreed the variety, called "golden rice" because of the color produced by the beta-carotene, with well-adapted local varieties and distribute the resulting plants to farmers all over the developing world.

Last June, at a Capitol Hill seminar on biotechnology sponsored by the Congressional Hunger Center, Shiva airily dismissed golden rice by claiming that "just in the state of Bengal 150 greens which are rich in vitamin A are eaten and grown by the women." A visibly angry Martina McGloughlin, director of the biotechnology program at the University of California at Davis, said "Dr. Shiva's response reminds me of... Marie Antoinette, [who] suggested the peasants eat cake if they didn't have access to bread." Alexander Avery of the Hudson Institute's Center for Global Food Issues noted that nutritionists at UNICEF doubted it was physically possible to get enough vitamin A from the greens Shiva was recommending. Furthermore, it seems unlikely that poor women living in shanties in the heart of Calcutta could grow greens to feed their children.

The apparent willingness of biotechnology's opponents to sacrifice people for their cause disturbs scientists who are trying to help the world's poor. At the annual meeting of the American Association for the Advancement of Science last February, Ismail Serageldin, the director of the Consultative Group on International Agricultural Research, posed a challenge: "I ask opponents of biotechnology, do you want 2 to 3 million children a year to go blind and 1 million to die of vitamin A deficiency, just because you object to the way golden rice was created?"

Vandana Shiva is not alone in her disdain for biotechnology's potential to help the poor. Mae-Wan Ho, a reader in biology at London's Open University who advises another activist group, the Third World Network, also opposes golden rice. And according to a *New York Times* report on a biotechnology meeting held last March by the Organization for Economic Cooperation and Development, Benedikt Haerlin, head of Greenpeace's European anti-biotech campaign, "dismissed the importance of saving African and Asian lives at the risk of spreading a new science that he considered untested."

Shiva, Ho, and Haerlin are leaders in a growing global war against crop biotechnology, sometimes called "green biotech" (to distinguish it from medical biotechnology, known as "red biotech"). Gangs of anti-biotech vandals with cute monikers such as Cropatistas and Seeds of Resistance have ripped up scores of research plots in Europe and the U.S. The so-called Earth Liberation Front burned down a crop biotech lab at Michigan State University on New Year's Eve in 1999, destroying years of work and causing $400,000 in property damage. (See "Crop Busters," January.) Anti-biotech lobbying groups have proliferated faster than bacteria in an agar-filled petri dish: In addition to Shiva's organization, the Third World Network, and Greenpeace, they include the Union of Concerned Scientists, the Institute for Agriculture and Trade Policy, the Institute of Science in Society, the Rural Advancement Foundation International, the Ralph Nader–founded Public Citizen, the Council for Responsible Genetics, the Institute for Food and Development Policy, and that venerable fount of biotech misinformation, Jeremy Rifkin's Foundation on Economic Trends. The left hasn't been this energized since the Vietnam War. But if the anti-biotech movement is successful, its victims will include the downtrodden people on whose behalf it claims to speak.

"We're in a war," said an activist at a protesters' gathering during the November 1999 World Trade Organization meeting in Seattle. "We're going to bury this first wave of biotech." He summed up the basic strategy pretty clearly: "The first battle is labeling. The second battle is banning it."

Later that week, during a standing-room-only "biosafety seminar" in the basement of a Seattle Methodist church, the ubiquitous Mae-Wan Ho declared, "This warfare against na-

"I ask opponents of biotechnology, do you
1 million to die of vitamin A deficiency, just because you

ture must end once and for all." Michael Fox, a vegetarian "bioethicist" from the Humane Society of the United States, sneered: "We are very clever little simians, aren't we? Manipulating the bases of life and thinking we're little gods." He added, "The only acceptable application of genetic engineering is to develop a genetically engineered form of birth control for our own species." This creepy declaration garnered rapturous applause from the assembled activists.

Despite its unattractive side, the global campaign against green biotech has had notable successes in recent years. Several leading food companies, including Gerber and Frito-Lay, have been cowed into declaring that they will not use genetically improved crops to make their products. Since 1997, the European Union has all but outlawed the growing and importing of biotech crops and food. Last May some 60 countries signed the Biosafety Protocol, which mandates special labels for biotech foods and requires strict notification, documentation, and risk assessment procedures for biotech crops. Activists have launched a "Five-Year Freeze" campaign that calls for a worldwide moratorium on planting genetically enhanced crops.

For a while, it looked like the United States might resist the growing hysteria, but in December 1999 the Environmental Protection Agency announced that it was reviewing its approvals of biotech corn crops, implying that it might ban the crops in the future. Last May the Food and Drug Administration, which until now has evaluated biotech foods solely on their objective characteristics, not on the basis of how they were produced, said it would formulate special rules for reviewing and approving products with genetically modified ingredients. U.S. Rep. Dennis Kucinich (D-Ohio) has introduced a bill that would require warning labels on all biotech foods.

In October, news that a genetically modified corn variety called StarLink that was approved only for animal feed had been inadvertently used in two brands of taco shells prompted recalls, front-page headlines, and anxious recriminations. Lost in the furor was the fact that there was little reason to believe the corn was unsafe for human consumption—only an implausible, unsubstantiated fear that it might cause allergic reactions. Even Aventis, the company which produced StarLink, agreed that it was a serious mistake to have accepted the EPA's approval for animal use only. Most proponents favor approving biotech crops only if they are determined to be safe for human consumption.

To decide whether the uproar over green biotech is justified, you need to know a bit about how it works. Biologists and crop breeders can now select a specific useful gene from one species and splice it into an unrelated species. Previously plant breeders were limited to introducing new genes through the time-consuming and inexact art of crossbreeding species that were fairly close relatives. For each cross, thousands of unwanted genes would be introduced into a crop species. Years of "backcrossing"—breeding each new generation of hybrids with the original commercial variety over several generations—were needed to eliminate these unwanted genes so that only the useful genes and characteristics remained. The new methods are far more precise and efficient. The plants they produce are variously described as "transgenic," "genetically modified," or "genetically engineered."

vant 2 to 3 million children a year to go blind and
bject to the way golden rice was created?"

Plant breeders using biotechnology have accomplished a great deal in only a few years. For example, they have created a class of highly successful insect-resistant crops by incorporating toxin genes from the soil bacterium *Bacillus thuringiensis.* Farmers have sprayed *B.t.* spores on crops as an effective insecticide for decades. Now, thanks to some clever biotechnology, breeders have produced varieties of corn, cotton, and potatoes that make their own insecticide. *B.t.* is toxic largely to destructive caterpillars such as the European corn borer and the cotton bollworm; it is not harmful to birds, fish, mammals, or people.

Another popular class of biotech crops incorporates an herbicide resistance gene, a technology that has been especially useful in soybeans. Farmers can spray herbicide on their fields to kill weeds without harming the crop plants. The most widely used herbicide is Monsanto's Roundup (glyphosate), which toxicologists regard as an environmentally benign chemical that degrades rapidly, days after being applied. Farmers who use "Roundup Ready" crops don't have to plow for weed control, which means there is far less soil erosion.

Biotech is the most rapidly adopted new farming technology in history. The first generation of biotech crops was approved by the EPA, the FDA, and the U.S. Department of Agriculture in 1995, and by 1999 transgenic varieties accounted for 33 percent of corn acreage, 50 percent of soybean acreage, and 55 percent of cotton acreage in the U.S. Worldwide, nearly

90 million acres of biotech crops were planted in 1999. With biotech corn, U.S. farmers have saved an estimated $200 million by avoiding extra cultivation and reducing insecticide spraying. U.S. cotton farmers have saved a similar amount and avoided spraying 2 million pounds of insecticides by switching to biotech varieties. Potato farmers, by one estimate, could avoid spraying nearly 3 million pounds of insecticides by adopting *B.t.* potatoes. Researchers estimate that *B.t.* corn has spared 33 million to 300 million bushels from voracious insects.

One scientific panel after another has concluded that biotech foods are safe to eat, and so has the FDA. Since 1995, tens of millions of Americans have been eating biotech crops. Today it is estimated that 60 percent of the foods on U.S. grocery shelves are produced using ingredients from transgenic crops. In April a National Research Council panel issued a report that emphasized it could not find "any evidence suggesting that foods on the market today are unsafe to eat as a result of genetic modification." *Transgenic Plants and World Agriculture*, a report issued in July that was prepared under the auspices of seven scientific academies in the U.S. and other countries, strongly endorsed crop biotechnology, especially for poor farmers in the developing world. "To date," the report concluded, "over 30 million hectares of transgenic crops have been grown and no human health problems associated specifically with the ingestion of transgenic crops or their products have been identified." Both reports concurred that genetic engineering poses no more risks to human health or to the natural environment than does conventional plant breeding.

As U.C.-Davis biologist Martina McGloughlin remarked at last June's Congressional Hunger Center seminar, the biotech foods "on our plates have been put through more thorough testing than conventional food ever has been subjected to." According to a report issued in April by the House Subcommittee on Basic Research, "No product of conventional plant breeding...could meet the data requirements imposed on biotechnology products by U.S. regulatory agencies....Yet, these foods are widely and properly regarded as safe and beneficial by plant developers, regulators, and consumers." The report concluded that biotech crops are "at least as safe [as] and probably safer" than conventionally bred crops.

In opposition to these scientific conclusions, Mae-Wan Ho points to a study by Arpad Pusztai, a researcher at Scotland's Rowett Research Institute, that was published in the British medical journal *The Lancet* in October 1999. Pusztai found that rats fed one type of genetically modified potatoes (not a variety created for commercial use) developed immune system disorders and organ damage. *The Lancet*'s editors, who published the study even though two of six reviewers rejected it, apparently were anxious to avoid the charge that they were muzzling a prominent biotech critic. But *The Lancet* also published a thorough critique, which concluded that Pusztai's experiments "were incomplete, included too few animals per diet group, and lacked controls such as a standard rodent diet. ...Therefore the results are difficult to interpret and do not allow the conclusion that the genetic modification of potatoes accounts for adverse effects in animals." The Rowett Institute, which does mainly nutritional research, fired Pusztai on the grounds that he had publicized his results before they had been peer reviewed.

Activists are also fond of noting that the seed company Pioneer Hi-Bred produced a soybean variety that incorporated a gene—for a protein from Brazil nuts—that causes reactions in people who are allergic to nuts. The activists fail to mention that the soybean never got close to commercial release because Pioneer Hi-Bred checked it for allergenicity as part of its regular safety testing and immediately dropped the variety. The other side of the allergy coin is that biotech can remove allergens that naturally occur in foods such as nuts, potatoes, and tomatoes, making these foods safer.

In April a National Research Council panel issue
suggesting that foods on the market today are unsafe t

Even if no hazards from genetically improved crops have been demonstrated, don't consumers have a right to know what they're eating? This seductive appeal to consumer rights has been a very effective public relations gambit for anti-biotech activists. If there's nothing wrong with biotech products, they ask, why don't seed companies, farmers, and food manufacturers agree to label them?

The activists are being more than a bit disingenuous here. Their scare tactics, including the use of ominous words such as *frankenfoods*, have created a climate in which many consumers would interpret labels on biotech products to mean that they were somehow more dangerous or less healthy than old-style foods. Biotech opponents hope labels would drive frightened consumers away from genetically modified foods and thus doom them. Then the activists could sit back and smugly declare that biotech products had failed the market test.

The biotech labeling campaign is a red herring anyway, because the U.S. Department of Agriculture plans to issue some 500 pages of regulations outlining what qualifies as "organic" foods by January, 2001. Among other things, the definition will require that organic foods not be produced using genetically modified crops. Thus consumers who want to avoid biotech products need only look for the "organic" label. Furthermore, there is no reason why conventional growers who believe they can sell more by avoiding genetically enhanced crops should not label their products accordingly, so long as they do not imply any health claims. The FDA has begun to solicit public comments on ways to label foods that are not genetically enhanced without implying that they are superior to biotech foods.

It is interesting to note that several crop varieties popular with organic growers were created through mutations deliberately induced by breeders using radiation or chemicals. This method of modifying plant genomes is obviously a far cruder and more imprecise way of creating new varieties. Radiation and chemical mutagenesis is like using a sledgehammer instead of the scalpel of biotechnology. Incidentally, the FDA doesn't review these crop varieties produced by radiation or chemicals for safety, yet no one has dropped dead from eating them.

Labeling nonbiotech foods as such will not satisfy the activists whose goal is to force farmers, grain companies, and food manufacturers to segregate biotech crops from conventional crops. Such segregation would require a great deal of duplication in infrastructure, including separate grain silos, rail cars, ships, and production lines at factories and mills. The StarLink corn problem is just a small taste of how costly and troublesome segregating conventional from biotech crops would be. Some analysts estimate that segregation would add 10 percent to 30 percent to the prices of food without any increase in safety. Activists are fervently hoping that mandatory crop segregation will also lead to novel legal nightmares: If a soybean shipment is inadvertently "contaminated" with biotech soybeans, who is liable? If biotech corn pollen falls on an organic cornfield, can the organic farmer sue the biotech farmer? Trial lawyers must be salivating over the possibilities.

The activists' "pro-consumer" arguments can be turned back on them. Why should the majority of consumers pay for expensive crop segregation that they don't want? It seems reasonable that if some consumers want to avoid biotech crops, they should pay a premium, including the costs of segregation.

As the labeling fight continues in the United States, antibiotech groups have achieved major successes elsewhere. The Biosafety Protocol negotiated last February in Montreal requires that all shipments of biotech crops, including grains and fresh foods, carry a label saying they "may contain living modified organisms." This international labeling requirement is clearly intended to force the segregation of conventional and biotech crops. The protocol was hailed by Greenpeace's Benedikt Haerlin as "a historic step towards protecting the environment and consumers from the dangers of genetic engineering."

Activists are demanding that the labeling provisions of the Biosafety Protocol be enforced immediately, even though the agreement says they don't apply until two years after the protocol takes effect. Vandana Shiva claims the food aid sent to Orissa after the October 1999 cyclone violated the Biosafety Protocol because it was unlabeled. Greenpeace cited the unratified Biosafety Protocol as a justification for stopping imports of American agricultural products into Brazil and Britain. "The recent agreement on the Biosafety Protocol in Montreal...means that governments can now refuse to accept imports of GM crops on the basis of the 'precautionary principle,'" said a February 2000 press release announcing that Greenpeace activists had boarded an American grain carrier delivering soybeans to Britain.

Under the "precautionary principle," regulators do not need to show scientifically that a biotech crop is unsafe before banning it; they need only assert that it has not been proved harmless. Enshrining the precautionary principle into international law is a major victory for biotech opponents. "They want to err on the side of caution not only when the evidence is not conclusive but when no evidence exists that would indicate harm is possible," observes Frances Smith, executive director of Consumer Alert.

Model biosafety legislation proposed by the Third World Network goes even further than the Biosafety Protocol, covering all biotech organisms and requiring authorization "for all activities and for all GMOs [genetically modified organisms] and derived products." Under the model legislation, "the absence of scientific evidence or certainty does not preclude the decision makers from denying approval of the introduction of the GMO or derived products." Worse, under the model regu-

report that emphasized it **could not find "any evidence**

at as a result of genetic modification."

lations "any adverse socio-economic effects must also be considered." If this provision is adopted, it would give traditional producers a veto over innovative competitors, the moral equivalent of letting candlemakers prevent the introduction of electric lighting.

Concerns about competition are one reason European governments have been so quick to oppose crop biotechnology. "EU countries, with their heavily subsidized farming, view foreign agribusinesses as a competitive threat," Frances Smith writes. "With heavy subsidies and price supports, EU farmers see no need to improve productivity." In fact, biotech-boosted European agricultural productivity would be a fiscal disaster for the E.U., since it would increase already astronomical subsidy payments to European farmers.

The global campaign against green biotech received a public relations windfall on May 20, 1999, when *Nature* published a study by Cornell University researcher John Losey that found that Monarch butterfly caterpillars died when force-fed milkweed dusted with pollen from *B.t.* corn. Since then, at every anti-biotech demonstration, the public has been treated to flocks of activist women dressed fetchingly as Monarch butterflies. But when more-realistic field studies were conducted, researchers found that the alleged danger to Monarch caterpillars had been greatly exaggerated. Corn pollen is heavy and doesn't spread very far, and milkweed grows in many places aside from the margins of cornfields. In the wild, Monarch caterpillars apparently know better than to eat corn pollen on milkweed leaves.

Furthermore, *B.t.* crops mean that farmers don't have to indiscriminately spray their fields with insecticides, which kill beneficial as well as harmful insects. In fact, studies show that *B.t.* cornfields harbor higher numbers of beneficial insects such as lacewings and ladybugs than do conventional cornfields. James Cook, a biologist at Washington State University, points out that the population of Monarch butterflies has been increasing in recent years, precisely the time period in which *B.t.* corn has been widely planted. The fact is that pest-resistant crops are harmful mainly to target species—that is, exactly those insects that insist on eating them.

Never mind; we will see Monarchs on parade for a long time to come. Meanwhile, a spooked EPA has changed its rules governing the planting of *B.t.* corn, requiring farmers to plant non-*B.t.* corn near the borders of their fields so that *B.t.* pollen doesn't fall on any milkweed growing there. But even the EPA firmly rejects activist claims about the alleged harms caused by *B.t.* crops. "Prior to registration of the first *B.t.* plant pesticides in 1995," it said in response to a Greenpeace lawsuit, "EPA evaluated studies of potential effects on a wide variety of non-target organisms that might be exposed to the *B.t.* toxin, e.g., birds, fish, honeybees, ladybugs, lacewings, and earthworms. EPA concluded that these species were not harmed."

Another danger highlighted by anti-biotech activists is the possibility that transgenic crops will crossbreed with other plants. At the Congressional Hunger Center seminar, Mae-Wan Ho claimed that "GM-constructs are designed to invade genomes and to overcome natural species barriers." And that's not all. "Because of their highly mixed origins," she added, "GM-constructs tend to be unstable as well as invasive, and may be more likely to spread by horizontal gene transfer."

As one tracks the war against biotech, it become primarily concerned about safety. What the

"Nonsense," says Tuskegee University biologist C.S. Prakash. "There is no scientific evidence at all for Ho's claims." Prakash points out that plant breeders specifically choose transgenic varieties that are highly stable since they want the genes that they've gone to the trouble and expense of introducing into a crop to stay there and do their work.

Ho also suggests that "GM genetic material" when eaten is far more likely to be taken up by human cells and bacteria than is "natural genetic material." Again, there is no scientific evidence for this claim. All genes from whatever source are made up of the same four DNA bases, and all undergo digestive degradation when eaten.

Biotech opponents also sketch scenarios in which transgenic crops foster superpests: weeds bolstered by transgenes for herbicide resistance or pesticide-proof bugs that proliferate in response to crops with enhanced chemical defenses. As McGloughlin notes, "The risk of gene flow is not specific to biotechnology. It applies equally well to herbicide resistant plants that have been developed through traditional breeding techniques." Even if an herbicide resistance gene did get into a weed species, most researchers agree that it would be unlikely to persist unless the weed were subjected to significant and continuing selection pressure—that is, sprayed regularly with a specific herbicide. And if a weed becomes resistant to one herbicide, it can be killed by another.

As for encouraging the evolution of pesticide-resistant in-

sects, that already occurs with conventional spray pesticides. There is no scientific reason for singling out biotech plants. Cook, the Washington State University biologist, points out that crop scientists could handle growing pesticide resistance the same way they deal with resistance to infectious rusts in grains: Using conventional breeding techniques, they stack genes for resistance to a wide variety of evolving rusts. Similarly, he says, "it will be possible to deploy different *B.t.* genes or stack genes and thereby stay ahead of the ever-evolving pest populations."

The environmentalist case against biotech crops includes a lot of innuendo. "After GM sugar beet was harvested," Ho claimed at the Congressional Hunger Center seminar, "the GM genetic material persisted in the soil for at least two years and was taken up by soil bacteria." Recall that the *Bacillus thuringiensis* is a *soil bacterium*—its habitat is the soil. Organic farmers broadcast *B.t.* spores freely over their fields, hitting both target and nontarget species. If organic farms were tested, it's likely that *B.t.* residues would be found there as well; they apparently have not had any ill effects. Even the EPA has conceded, in its response to Greenpeace's lawsuit, that "there are no reports of any detrimental effects on the soil ecosystems from the use of *B.t.* crops."

Given their concerns about the spread of transgenes, you might think biotech opponents would welcome innovations designed to keep them confined. Yet they became apoplectic when Delta Pine Land Co. and the U.S. Department of Agriculture announced the development of the Technology Protection System, a complex of three genes that makes seeds sterile by interfering with the development of plant embryos. TPS also gives biotech developers a way to protect their intellectual property: Since farmers couldn't save seeds for replanting, they would have to buy new seeds each year.

Because high-yielding hybrid seeds don't breed true, corn growers in the U.S. and Western Europe have been buying seed annually for decades. Thus TPS seeds wouldn't represent a big change in the way many American and European farmers do business. If farmers didn't want the advantages offered in the enhanced crops protected by TPS, they would be free to buy seeds without TPS. Similarly, seed companies could offer crops with transgenic traits that would be expressed only in the presence of chemical activators that farmers could choose to buy if they thought they were worth the extra money. Ultimately, the market would decide whether these innovations were valuable.

If anti-biotech activists really are concerned about gene flow, they should welcome such technologies. The pollen from crop plants incorporating TPS would create sterile seeds in any weed that it happened to crossbreed with, so that genes for traits such as herbicide resistance or drought tolerance couldn't be passed on.

This point escapes some biotech opponents. "The possibility that [TPS] may spread to surrounding food crops or to the natural environment is a serious one," writes Vandana Shiva in her recent book *Stolen Harvest.* "The gradual spread of sterility in seeding plants would result in a global catastrophe that could eventually wipe out higher life forms, including humans, from the planet." This dire scenario is not just implausible but biologically impossible: *TPS is a gene technology that causes sterility; that means, by definition, that it can't spread.*

ver clearer that its leaders are not

ally **hate is capitalism and globalization.**

Despite the clear advantages that TPS offers in preventing the gene flow that activists claim to be worried about, the Rural Advancement Foundation International quickly demonized TPS by dubbing it "Terminator Technology." RAFI warned that "if the Terminator Technology is widely utilized, it will give the multinational seed and agrochemical industry an unprecedented and extremely dangerous capacity to control the world's food supply." In 1998 farmers in the southern Indian state of Karnataka, urged on by Shiva and company, ripped up experimental plots of biotech crops owned by Monsanto in the mistaken belief that they were TPS plants. The protests prompted the Indian government to declare that it would not allow TPS crops to enter the country. That same year, 20 African countries declared their opposition to TPS at a U.N. Food and Agriculture Organization meeting. In the face of these protests, Monsanto, which had acquired the technology when it bought Delta Pine Land Co., declared that it would not develop TPS.

Even so, researchers have developed another clever technique to prevent transgenes from getting into weeds through crossbreeding. Chloroplasts (the little factories in plant cells that use sunlight to produce energy) have their own small sets of genes. Researchers can introduce the desired genes into chloroplasts instead of into cell nuclei where the majority of

a plant's genes reside. The trick is that the pollen in most crop plants don't have chloroplasts, therefore it is impossible for a transgene confined to chloroplasts to be transferred through crossbreeding.

As one tracks the war against green biotech, it becomes ever clearer that its leaders are not primarily concerned about safety. What they really hate is capitalism and globalization. "It is not inevitable that corporations will control our lives and rule the world," writes Shiva in *Stolen Harvest.* In *Genetic Engineering: Dream or Nightmare?* (1999), Ho warns, "Genetic engineering biotechnology is an unprecedented intimate alliance between bad science and big business which will spell the end of humanity as we know it, and the world at large." The first nefarious step, according to Ho, will occur when the "food giants of the North" gain "control of the food supply of the South through exclusive rights to genetically engineered seeds."

Accordingly, anti-biotech activists oppose genetic patents. Greenpeace is running a "No Patents on Life" campaign that appeals to inchoate notions about the sacredness of life. Knowing that no patents means no investment, biotech opponents declare that corporations should not be able to "own" genes, since they are created by nature.

The exact rules for patenting biotechnology are still being worked out by international negotiators and the U.S. Patent and Trademark Office. But without getting into the arcane details, the fact is that discoverers and inventors don't "own" genes. A patent is a license granted for a limited time to encourage inventors and discoverers to disclose publicly their methods and findings. In exchange for disclosure, they get the right to exploit their discoveries for 20 years, after which anyone may use the knowledge and techniques they have produced. Patents aim to encourage an open system of technical knowledge.

"Biopiracy" is another charge that activists level at biotech seed companies. After prospecting for useful genes in indigenous crop varieties from developing countries, says Shiva, companies want to sell seeds incorporating those genes back to poor farmers. Never mind that the useful genes are stuck in inferior crop varieties, which means that poor farmers have no way of optimizing their benefits. Seed companies liberate the useful genes and put them into high-yielding varieties that can boost poor farmers' productivity.

Amusingly, the same woman who inveighs against "biopiracy" proudly claimed at the Congressional Hunger Center seminar that 160 varieties of kidney beans are grown in India. Shiva is obviously unaware that farmers in India are themselves "biopirates." Kidney beans were domesticated by the Aztecs and Incas in the Americas and brought to the Old World via the Spanish explorers. In response to Shiva, C.S. Prakash pointed out that very few of the crops grown in India today are indigenous. "Wheat, peanuts, and apples and everything else—the chiles that the Indians are so proud of," he noted, "came from outside. I say, thank God for the biopirates." Prakash condemned Shiva's efforts to create "a xenophobic type of mentality within our culture" based on the fear that "everybody is stealing all of our genetic material."

If the activists are successful in their war against green biotech, it's the world's poor who will suffer most. The International Food Policy Research Institute estimates that global food production must increase by 40 percent in the next 20 years to meet the goal of a better and more varied diet for a world population of some 8 billion people. As biologist Richard Flavell concluded in a 1999 report to the IFPRI, "It would be unethical to condemn future generations to hunger by refusing to develop and apply a technology that can build on what our forefathers provided and can help produce adequate food for a world with almost 2 billion more people by 2020."

One way biotech crops can help poor farmers grow more food is by controlling parasitic weeds, an enormous problem in tropical countries. Cultivation cannot get rid of them, and farmers must abandon fields infested with them after a few growing seasons. Herbicide-resistant crops, which would make it possible to kill the weeds without damaging the cultivated plants, would be a great boon to such farmers.

By incorporating genes for proteins from viruses and bacteria, crops can be immunized against infectious diseases. The papaya mosaic virus had wiped out papaya farmers in Hawaii, but a new biotech variety of papaya incorporating a protein from the virus is immune to the disease. As a result, Hawaiian papaya orchards are producing again, and the virus-resistant variety is being made available to developing countries. Similarly, scientists at the Donald Danforth Plant Science Center in St. Louis are at work on a cassava variety that is immune to cassava mosaic virus, which killed half of Africa's

If the activists are successful in their war against biotech

must increase by 40 percent in the next 20 years to provid

cassava crop two years ago.

Another recent advance with enormous potential is the development of biotech crops that can thrive in acidic soils, a large proportion of which are located in the tropics. Aluminum toxicity in acidic soils reduces crop productivity by as much as 80 percent. Progress is even being made toward the Holy Grail of plant breeding, transferring the ability to fix nitrogen from legumes to grains. That achievement would greatly reduce the need for fertilizer. Biotech crops with genes for drought and salinity tolerance are also being developed. Further down the road, biologist Martina McGloughlin predicts, "we will be able to enhance other characteristics, such as growing seasons, stress tolerance, yields, geographic distribution, disease resistance, [and] shelf life."

Biotech crops can provide medicine as well as food. Biologists at the Boyce Thompson Institute for Plant Research at Cornell University recently reported success in preliminary tests with biotech potatoes that would immunize people against diseases. One protects against Norwalk virus, which causes diarrhea, and another might protect against the hepatitis B virus which afflicts 2 billion people. Plant-based vaccines would be especially useful for poor countries, which could manufacture and distribute medicines simply by having local farmers grow them.

Shiva and Ho rightly point to the inequities found in developing countries. They make the valid point that there is enough food today to provide an adequate diet for everyone if it were more equally distributed. They advocate land reform and microcredit to help poor farmers, improved infrastructure so farmers can get their crops to market, and an end to agricultural subsidies in rich countries that undercut the prices that poor farmers can demand.

Addressing these issues is important, but they are not arguments against green biotech. McGloughlin agrees that "the real issue is inequity in food distribution. Politics, culture, regional conflicts all contribute to the problem. Biotechnology isn't going to be a panacea for all the world's ills, but it can go a long way toward addressing the issues of inadequate nutrition and crop losses." Kenyan biologist Florence Wambugu argues that crop biotechnology has great potential to increase agricultural productivity in Africa without demanding big changes in local practices: A drought-tolerant seed will benefit farmers whether they live in Kansas or Kenya.

Yet opponents of crop biotechnology can't stand the fact that it will help developed countries first. New technologies, whether reaping machines in the 19th century or computers today, are always adopted by the rich before they become available to the poor. The fastest way to get a new technology to poor people is to speed up the product cycle so the technology can spread quickly. Slowing it down only means the poor will have to wait longer. If biotech crops catch on in the developed countries, the techniques to make them will become available throughout the world, and more researchers and companies will offer crops that appeal to farmers in developing countries.

Activists like Shiva subscribe to the candlemaker fallacy: If people begin to use electric lights, the candlemakers will go out of business, and they and their families will starve. This is a supremely condescending view of poor people. In order not to exacerbate inequality, Shiva and her allies want to stop technological progress. They romanticize the backbreaking lives that hundreds of millions of people are forced to live as they eke out a meager living off the land.

Per Pinstrup-Andersen of the International Food Policy Research Institute asked participants in the Congressional Hunger Center seminar to think about biotechnology from the perspective of people in developing countries: "We need to talk about the low-income farmer in West Africa who, on half an acre, maybe an acre of land, is trying to feed her five children in the face of recurrent droughts, recurrent insect attacks, recurrent plant diseases. For her, losing a crop may mean losing a child. Now, how can we sit here debating whether she should have access to a drought-tolerant crop variety? None of us at this table or in this room [has] the ethical right to force a particular technology upon anybody, but neither do we have the ethical right to block access to it. The poor farmer in West Africa doesn't have any time for philosophical arguments as to whether it should be organic farming or fertilizers or GM food. She is trying to feed her children. Let's help her by giving her access to all of the options. Let's make the choices available to the people who have to take the consequences." ◆

Ronald Bailey (rbailey@reason.com) is REASON*'s science correspondent.*

he world's **poor will suffer most.** Global food production
a better diet for a population of some 8 billion people.

AMERICA'S MOST DANGEROUS POLITICIAN

New Mexico Gov. Gary Johnson speaks out on taxes, school vouchers, and drug policy.

Interviewed by Michael W. Lynch

I've been in New Mexico less than 10 minutes when I realize that no ordinary politician rules the Land of Enchantment. After the young woman working the rental car counter discovers I need wheels to visit her very own governor, she starts talking excitedly and positively about his efforts to pass a school choice bill. One of her co-workers, a Democratic activist, tries to straighten her out, and the conversation soon grows to include other employees, all of whom are surprisingly well-informed due to the governor's high-profile efforts to pass a statewide voucher program. The Democrat wants to make something else clear about New Mexico's top pol: She doesn't appreciate his crusade for drug legalization. Struggling to come up with the worst possible epithet, she finally spits out, "I think he's a *liberal*," adding that as one he embarrasses her state. (Such is the New West that even Democrats think of liberals as lower than rattlesnakes.)

PHOTOS: EMILY MEDVEC

New Mexico Gov. Gary Johnson is many things—a successful businessman, a two-term governor, an Iron Man triathlete, an aspiring conqueror of Mt. Everest. He's hardly a liberal, though, unless one uses the term in its original sense of someone who believes that a minimal state is best suited for a free people. Even then, the term doesn't fully do justice to this energetic man. When pressed on his vision of the state's role, the 47-year-old Johnson speaks of "ensuring a level playing field and [making certain] that liberties and freedoms are equally available to all." He argues that the government only "needs to ensure that no one is harmful to anyone else."

To be sure, Johnson's limited-government iconoclasm is more that of an accountant—or a motivational speaker—than that of a philosopher-king. When I first ask him to explain his overarching governing philosophy, he pulls from his wallet a card containing his seven—count 'em—principles of good government, which seem to be culled equally from Ben Franklin and Tony Robbins. Number 1: Become reality driven. Number 2: Always be honest and tell the truth. Number 7: Be willing to do whatever it takes to get the job done.

"My overriding philosophy is the common-sense business approach to state government, period," says Johnson. "Best product, best service, lowest price." On issues ranging from health care for the poor to road construction to drug prohibition to education, he's convinced you get the best product at the lowest cost when private enterprise injects competition into the process.

This practical approach drives his notorious attitude toward drug prohibition, which Johnson has attacked more forcefully and visibly than any other elected official in America today. He rails against the drug war mostly, though not exclusively, on the grounds that it is inefficient. In general, he is more interested in pragmatic concerns than in defending anything as abstract as inalienable rights. When I bring up prostitution, another consensual crime, he endorses decriminalization, but not on the grounds that people own their bodies or that it's not the state's business. Instead he frames his response this way: "Given that prostitution takes place, the question is, 'Are you safer engaging a prostitute in Nevada or New Mexico?' I think you are clearly safer engaging one in Nevada in a licensed prostitution establishment."

Such unorthodox positions and the willingness to discuss them openly reflect the unlikely path Johnson traveled before acquiring political power. Most successful pols spend their salad days engaged in political hackery, always making sure their "future political viability" is kept safe from harm. Johnson was on another plan altogether: He spent years smoking dope a couple times a week, competing vigorously in athletics, and then, with his wife of 24 years, building a construction business called Big J Construction. (Though the rental car workers suggested the name referred to his pot smoking days, the governor denies it stems from anything but the first letter of his last name.) In the mid-1990s, Johnson decided it was time to dabble in public service, and he approached the state Republican Party about running for the top statewide office. The Republicans were polite but dismissive, telling him that as an unknown businessman he couldn't win. He thought otherwise, and he spent $500,000 of his own money to saturate the state with his message of a "common-sense business approach to politics." When the ballots were tallied in 1994, he'd won with 50 percent of the vote in a three-way race. He increased his share of the vote in 1998 by 5 percent, making him the first governor in New Mexico history to be elected to two consecutive four-year terms.

I talked with Johnson in his Santa Fe office for about an hour in mid-August. We spoke of his accomplishments: no tax increases in six years, a major road building program, shifting Medicaid to managed care, constructing two new private prisons, canning 1,200 state employees, and vetoing a record number of bills. Says Johnson, "Every time you pass a law it is a little bite out of freedom." But we spent the majority of time focusing on the two issues that have put the governor in the national spotlight—issues on which he hasn't achieved anything close to success: drug legalization and school choice.

Reason: Most politicians who admit to using drugs explain it in terms of a redemption narrative: "I did it, I ought not have done it, and no one else should do it." You tell a different story.

Gary Johnson: Like a lot of other people, I've smoked marijuana. It is what goes on in this country. At the time [the early 1970s], I thought it was a mind-expanding experience, just like a lot of kids and a lot of adults do. Most people who smoke marijuana do it in a way similar to having

cocktails in the evening.

I don't smoke marijuana anymore. I don't drink. Marijuana is a handicap. So is alcohol. Alcohol is a terrible handicap. But in spite of being a handicap, it shouldn't be criminal. At one point in this country's history, alcohol was criminal. I think it's a bad choice. But in no way should you end up in jail for doing that.

You should end up in jail for drinking and driving, drinking and doing crime, drinking and doing harm, just like you should end up in jail if you are going to smoke marijuana and drive, just like if you are going to smoke marijuana and do crime. Those are the lines that we need to draw.

Reason: What prompted you to be so honest about your past drug use?

Johnson: I personally reacted to President Clinton's statement that he didn't inhale. Come on! I needed to be honest about this, so it was something that I volunteered.

Reason: You say drugs are a handicap and people shouldn't do them. But you also say that the most people who use drugs do so responsibly. So are they really a handicap? People could relax at a party by taking a hit off a joint rather than drinking to excess. Why is that a handicap and not a life-enhancing experience?

Johnson: Clearly, it is a handicap. You are slowed down in your reactions. You are not as quick mentally, and you are not as quick physically. [Then again], as stoned as I have ever been on marijuana, the impairment does not compare to being drunk.

Reason: Aren't there times when being "slowed down" can be both appropriate and fun—like when you're watching a Cheech & Chong movie or *Austin Powers*?

Johnson: It is a handicap because you are not being as productive as you could be. I'm speaking for myself, but why are you watching Cheech & Chong in the first place? Why aren't you out riding a bicycle? Why aren't you reading a book? It's much harder to concentrate on a book after having smoked marijuana.

Reason: If it was a handicap, why did you keep doing it?

Johnson: Because it was fun. At the time I was doing it, it was not a handicap. I only came to that conclusion later. There was one particular incident where it really hit home. That's when I quit being a chronic marijuana smoker.

I was out of college and pursuing a career as a professional skier. I remember setting up gates one morning at the Schweitzer ski basin in Idaho and running through the gates and checking my times. My first run was 16 seconds. My next run was 15.25 seconds. I went down again, this time in 14.5 seconds. On the lift back up the mountain, I was riding with a ski patroller who pulled out a joint. We got high and then got to the top of the course. I really smoked the next run—I figured I went through that course faster than ever before! You know what I mean. This was going to be a 13, I was thinking. Yet it took me 18 seconds. I had thought I was that much faster but I was that much slower. It was just one of those big gongs going off in your head: Wow, this is not what I thought it was. Wait a minute!

"I'VE SMOKED MARIJUANA. I THOUGHT IT WAS A MIND-EXPANDING EXPERIENCE, JUST LIKE A LOT OF KIDS AND A LOT OF ADULTS DO."

Reason: But was that run fun?

Johnson: Oh yeah. But was it faster? You've got to remember what my goal was. My goal was to be a professional racer.

Reason: You've obviously been a big success. How about your buddies that you smoked pot with in high school and college? Have most of them been successful?

Johnson: Yes.

Reason: Gone on to sort of normal lives....

Johnson: Every one of 'em. (Laughs.)

Reason: No one in jail?

Johnson: I do have acquaintances, like we all do, who have overdosed and others who aren't successful. But my core group, my real close buddies, have all grown up to be successful men and women.

Reason: You've said that it's an absolute political taboo for a presidential candidate today to talk about legalizing marijuana. If, as you say, 75 percent of people don't think it should be criminal, why is it such a taboo topic?

Johnson: I don't have the answer. When you ask people, "How many in this room believe that smoking marijuana within the confines of your own home, doing no harm to anybody except arguably yourself, how many think someone belongs in jail for that?," 90 percent of the room raises their hand to say no, people shouldn't go to jail for that.

Then you ask how many believe people should go to jail for selling marijuana. Eighty percent of the room believes people should go to jail for *selling* marijuana. That's the disconnect. People think it's OK to do it as long as you are not doing any harm to anyone, but it's not OK to sell it. But how are you going to get it? They don't understand who the pusher is. The pusher is just a user who sells a little bit based on their own habit. Nobody is going to the police department and saying, "This person sold me drugs, and I want them arrested." Everybody is getting arrested because they sold to an undercover agent.

Reason: If you feel that smoking pot—or even selling it—does not make a person a criminal, why not pardon people in New Mexico who are doing time for simple possession?

Johnson: It's complex. Nobody is in jail on the basis of use. They are in jail on the basis of possession of large amounts of drugs that qualify as trafficking. They are in jail for selling drugs. And it is often attached to property crime. That is where I do draw a line. I have a chance here to change the law. I think that it is OK to launch the discussion and have the debate. But I don't think it's right to take it upon myself to pardon convicted criminals based on laws that the population has supported by electing the people that they have elected.

Reason: What about other drugs? I know your model for heroin is similar to the Swiss model.

Johnson: Let's think about a model that could exist in this country. You are an addict. So maybe you could go to a heroin maintenance program where you could get a prescription for heroin from a doctor. When you went to get your heroin you would have to go to a clinic and actually ingest the heroin at the clinic. I bet it would cost one-tenth of what it costs out on the street. You wouldn't have AIDS or Hepatitis C, since you wouldn't use dirty needles. You are not going to have an overdose because the quantity and the impurities are not going to kill you. Since it's so much cheaper than what's on the street, you wouldn't have to engage in crime to pay for it. You wouldn't have the motivation to recruit other heroin addicts to pay for your own habit.

I think this would be a better situation than what is happening today. There are tens of thousands of heroin addicts with one thing on their mind: Where are they going to get their next fix, and how are they going to pay for it? You and I pay for that every single day.

Reason: What about other drugs that are more popular than heroin? Cocaine, say?

Johnson: I don't have an answer when it comes to cocaine. I've always said that. I am not advocating the legalization of cocaine. I don't know how you do that.

Reason: Isn't the parallel to alcohol the same with coke as it is with pot?

Johnson: I'm trying to be reality-based in this. Start off talking about marijuana, start off talking about harm reduction strategies, and start off talking about how to move away from making a cocaine user a criminal. I believe that if you made all drugs legal, just made them over-the-counter—which I'm not advocating—it would be a better situation than we have today. A much better situation than we have today. But I'm not advocating that.

Reason: As you've said elsewhere, this issue is a political zero—it doesn't make you popular or win you votes. So why is it worth your energy?

Johnson: I made a pledge to myself that I am not going to get out of office thinking, "Coulda, shoulda, woulda." This is definitely one of those issues that would be easy not to address because to say anything contrary to the status quo is political suicide. I had my eyes open when I went into this.

Reason: What has been the reaction from other politicians here in New Mexico and elsewhere?

Johnson: The responses in this office—the calls, faxes, letters, e-mails, people coming up to me on the street—is about 95 percent positive. The response from elected officials and those in law enforcement—and I am not talking about the guys on the street: I'm talking about those in charge—has been about 100 percent negative. However, I have been approached

by many elected officials who say, "Way to go. This needs to be said. Your position is right. But you are not going to hear that from me in public."

Reason: Why won't other elected officials speak out?

Johnson: Politics is a herd mentality. Politicians don't really lead. Politicians reflect what they think is consensus opinion.

I see drug policy changing. No question—no *if*s, *and*s, or *but*s. In the early 1970s, all my friends and I looked around and thought that the law would get changed. Of course, we were smoking marijuana, and we knew that it was illegal, we knew that it was criminal, and we knew that it shouldn't be criminal. But the law hasn't been changed.

Reason: Is that partly because drug laws don't cause much pain to people who can change them? When Al Gore's son gets caught smoking pot at prep school, he doesn't get arrested, he doesn't go to jail, he doesn't even wind up in the newspaper because his daddy makes a few calls.

Johnson: Class plays a role. But I also know people who smoke pot regularly but don't think that marijuana should be legalized. They say, "I smoke marijuana, but you know what? I am in control, I can afford this, and I am not going to get caught if I'm careful."

Reason: What do you hope to achieve by putting forward this issue of drug legalization as you have?

Johnson: That we might actually move the needle in the right direction. Any movement at all in the needle is significant, given the depth of the problem. Any movement at all that reduces disease, that reduces overdoses, that reduces property crime, that reduces violent crime is good.

I'm a cost-benefit analysis person: What are we spending and what are we getting? My premise is the war in drugs is a miserable failure. I don't know of a bigger problem in every single state, or a bigger expense that might actually have alternative solutions. Drugs account for half of law enforcement spending, half of prison spending, half of court spending. What are we getting for it? We are arresting 1.6 million people a year in this country on drug-related charges, and it's a failure.

Reason: Let's talk about another controversial program that you have been pushing hard: school vouchers. What is your program, how have you been selling it, and what audience has been the most receptive?

Johnson: What I've proposed is that every single K–12 student in the state of New Mexico, all 300,000 of them, get a voucher to attend whatever school they want. The value of the voucher would be about $3,500. That's my proposal.

I have taken this on the stump, and I will continue to take it on the stump for the next two and a half years. I have talked to any group that will ask me to come talk about vouchers. Same, by the way, when it comes to drugs. So I think New Mexico is getting better and better educated on vouchers. After a couple of years on this issue, the needle has moved. No question about it, the needle has moved! Has it gone far enough? No. All you can do is keep going, going, going.

Reason: Why is it so hard to get vouchers passed?

Johnson: The biggest criticism is that it will take money away from public schools, that it will destroy the public school system. My plan would actually increase the per capita funding for kids who remain in public schools.

We are actually spending about $5,500 dollars per child, and each public school district would get the $2,000 differential for each student who opted out. The example I use is this: Say that every student in Santa Fe were to opt out of public schools, which isn't possible and is not going to happen. But if it did, Santa Fe public schools would be left with about 40 percent of their budget and no students. Tell me how that takes away from public education.

Reason: How do your opponents deal with that?

Johnson: I don't think they do. It's one of those pins in the balloon. Go down the list of the main criticisms: Vouchers

"SCHOOL VOUCHERS ARE FOR THE POOR, WHO LIVE IN THE WORST NEIGHBORHOODS, GO TO THE WORST SCHOOLS, AND CAN'T GET AWAY FROM THEM."

only favor the rich. Baloney! People with money live in good neighborhoods that have good schools. Give me a break. Vouchers are for the poor. Vouchers are for those that don't have money, who live in the worst neighborhoods, go to the worst schools, and can't get away from them.

Keep going down the list: Vouchers are unconstitutional because you're giving money to private schools. No. If you want to start calling vouchers unconstitutional, then every single state has got a lot of unconstitutional programs. We give low-income parents money so they can go take their child to child care. We don't tell them where to take their child. The examples go on and on. You can just go on and on with the criticisms and the rebuttals of the criticisms.

Reason: Why are vouchers important? Why not just fix the public schools?

Johnson: Since I have been governor, K–12 educational spending has gone from $1.1 billion a year to $1.6 billion a year. By all measurements, students are doing just a little bit worse from year to year. For all that money, shouldn't we be doing just a little bit better? All I suggest is to make K–12 like higher education. Higher education in the United States is the best in the world because these institutions compete with each other for your tuition dollar. Let's just bring competition to public education. This is not about getting rid of public education; it is about providing alternatives that public schools very, very quickly will react to. Public schools will get better if they are subject to competition.

Reason: What role do charter schools play in injecting competition into the system?

Johnson: This last year we passed a comprehensive charter schools act. Great! This is a way for public schools to become better. Add vouchers. Give every single student in the state of New Mexico a voucher, and charter schools will become the vehicle by which public schools compete. Pass vouchers, and every single school will become a charter school overnight.

Reason: What do you consider your major accomplishments as governor of New Mexico?

Johnson: Building 500 miles of four-lane highway in the state. We have reduced taxes by about $123 million annually. More significantly, before my taking office there was never a set of six years in the state of New Mexico where not a single tax had gone up. We reformed Medicaid and got Medicaid costs under control. We built a couple of new, private prisons in New Mexico. We had prisoners housed out of state, and the federal court system had been running prisons in New Mexico under a consent decree since 1980. We are now out from under that consent decree. We have approximately 1,200 fewer employees in state government today than we did when I took office.

Reason: What's the thinking behind your road building programs? Traditionally those are often pork projects.

Johnson: Economic growth occurs only if you are connected with a four-lane highway. A lot of New Mexico is rural, and building 500 miles of four-lane highway is going to make a huge economic difference to all those communities. Basically, now we have connected every town in New Mexico with 30,000 people.

To save money, we looked at private alternatives in building the roads. The highway project on Highway 44, which is Albuquerque to Farmington, is designed, financed, built, and guaranteed by a private company. This is completely unique. We are actually the first state in the United States to adopt an innovative financing program for Highway 44, by bonding federal revenues. As a result, other states are copying it, and Wall Street is embracing it.

Reason: Private prisons. Why did you build them, and how did you get them through the legislature?

Johnson: First off, let's go with an assumption. It doesn't have to be private prisons. It can be private roads being built, it can be private schools, it can be anything. If you are getting better goods and services and it is the same price, you go with the same price, better goods and services. If what you are getting is the same goods and services but you are paying significantly less, than you go with paying significantly less. That is the situation with private prisons in New Mexico. We are getting the same product as we have always had—I would argue we are getting a better product—and we are getting it for significantly less. That's good government.

Reason: How were you able to get this through the legislature?

Johnson: We weren't. This was something that we accomplished administratively. There was absolutely no cooperation whatsoever to get these things built.

Reason: You've said that you have always believed that life's highest calling is to do good by others, and that politics is a way of accomplishing that. But you have spent most of your life doing good by others in the private sector. I consider building a company and providing goods and services doing good by others. Have you been able to do more good by others as a politician than as a private citizen?

Johnson: No question. Being governor of a state gives you enormous ability to do just that. I think we have moved the needle in the right direction. I'll be honest with you about where I think we have moved the needle the least. It's probably in the welfare reform areas, in getting a handle on child support. I don't think I have done anything to move the needle on education in New Mexico other than funding by about $500 million more.

Reason: How about tax cuts? Did you get the tax cuts you wanted to see?

Johnson: No. I cut taxes to the tune of about $123 million on an annual basis. [New Mexico's budget will be $3.5 billion in fiscal year 2001.] But any citizen in the state would be hard pressed to tell you what any of those were. Every single year, I have advocated significant income tax reduction, and I will continue to do so. It's significant that we've had no tax increases in New Mexico since I've been governor. It has never happened before. But we haven't had the cuts I've wanted either.

Reason: Your term's up January 1, 2003. What's next for you? More politics?

Johnson: No politics in my future. I have effectively pulled the pin on my political career with my stance on drugs, and I recognize that up front.

The First Amendment vs. freedom of speech • By Cathy Young

The latest round in the perennial legal battle over the separation of church and state ended on June 19, when the U.S. Supreme Court struck down a Texas school district's policy permitting voluntary, student-initiated public prayers before high school football games. But the litigation over religious expression in public schools is likely to continue. It is a conflict in which two key First Amendment protections—freedom of speech and the prohibition against

state establishment of religion—seem to collide. And yet the real paradox, perhaps, is that neither side in this debate wants speech to be *really* free when it comes to religion.

The Supreme Court case, *Santa Fe Independent School District v. Doe*, began in 1995, when several families challenged the practice of having a prayer delivered over the school's public address system at the start of each home varsity football game. The plaintiffs—not atheists but Catholics and Mormons—saw this as part of a general pattern of promotion of a specific brand of Christianity by the schools of the mostly Baptist town. Teachers led prayers before lunch, handed out flyers for revival meetings, and in some cases actively proselytized students of other faiths and disparaged their beliefs.

After the lawsuit was filed, the district took steps to curb these excesses and devised an ostensibly neutral solution to the problem of public prayer at football games: The students would elect a speaker to deliver pre-game remarks—religious or secular—to "solemnize the event." It is this policy that the high court has rejected as thinly disguised public sponsorship of prayer.

In a caustic dissent, Chief Justice William Rehnquist complained that the majority opinion, written by Justice John Paul Stevens, "bristles with hostility to all things religious in public life." Yet Rehnquist conceded that if the disputed policy resulted in prayer, say, 90 percent of the time, it would probably be unconstitutional.

The same people who wax poetic about defending religious liberty for Christians can get very unhappy with the wrong kind of speech about religion.

Conservative critics of a strict separation of church and state frame the issue as one of free speech and free exercise of religion. This emphasis is shrewd political strategy—no one wants to admit to being against either freedom—but it also raises a thorny issue. If government schools allow student-initiated religious expression at official school events, are they unconstitutionally promoting religion? If they muzzle such expression, are they unconstitutionally suppressing speech?

Even conservative Pepperdine University law professor Douglas Kmiec, who believes that modern secularism has "perverted" the constitutional ban on an official state religion into a mandate to banish religiosity from the public square, wrote in *The Wall Street Journal* that, "given the peculiar facts of the case, the Supreme Court may have been right" to strike down the Santa Fe policy. Those facts included the district's history of practices that were clearly unconstitutional even under the narrowest interpretation of the Establishment Clause. The policy allowing an elected student speaker to deliver an invocation was rather transparently designed as a way to preserve pre-game prayer.

But in other, more complex cases currently moving through the legal system, there is a far stronger claim that absolute separation unfairly singles out religious speech. Take the saga of the brothers Chris and Jason Niemeyer, devout evangelical Christians and successive class valedictorians at Oroville High School in California in 1998 and 1999. The Niemeyers were barred from giving the traditional commencement address to their classmates because they wanted to talk about their faith.

As many schools require, Chris Niemeyer gave the school administrators an advance copy of his speech, which asserted that all people are "God's children, through Jesus Christ's death, when we accept his free love and saving grace," and urged listeners to embrace a "personal relationship" with God. The principal told him to tone down the religious message. After an unsuccessful attempt to get a court order securing his right to speak, the boy wanted to make brief remarks at graduation explaining why he couldn't give a speech. But school officials stopped him on his way to the podium and told him he couldn't speak at all—a gesture that prompted loud protests from the crowd and nearly sparked a riot.

The following year, Jason Niemeyer submitted a valedictory address that, while less focused on religion, concluded by urging all those present "to take advantage of the friendship that is offered us in Christ." After consulting with attorneys, the school forbade him to give the speech and also nixed a revised version with no direct references to Jesus.

Both of the brothers are suing the school district. So far, the courts have sided with the school, which argues that graduation is an extension of the school curriculum and that, therefore, sectarian commencement messages should not be permitted.

Yet had the brothers been allowed to speak, interpreting their remarks as "establishment of religion" by the state would have been far more of a stretch than in the Texas football case. A valedictorian's address has a clear secular purpose, and neither boy would have been the sole graduation speaker. It is doubtful that any student in the audience could have perceived a religiously themed valedictory speech as official endorsement of a sectarian creed by the school (any more than Chris Niemeyer's

election as class president in his senior year, at a time when he was also the co-leader of a Christian club at school, amounted to an endorsement of religion).

To remove any shade of suspicion, an administrator could have made a statement that any expressions of religious faith reflected the speakers' individual beliefs. Indeed, the concern of the officials seems to have been less that some people would feel coerced or discriminated against than that some people would feel uncomfortable.

In a declaration filed in the legal case, Chris Niemeyer's co-valedictorian, Delisa Freistadt, who is Jewish, stated that she was glad the court didn't "force" her to listen to his speech. The Niemeyers' attorneys counter, rather persuasively, that it is part of the American way that we are sometimes forced to listen to speech we don't like. (Freistadt could have countered speech with more speech and used her time at the podium to talk about respecting religious differences.) As applied in this case so far, the First Amendment seems to be less a guarantee of religious freedom than a speech code guaranteeing that no one's feelings are hurt.

There may be an anti-religion double standard at work as well. Some of the Niemeyers' local supporters gripe that the same school officials who muzzled the boys allowed the installation of a Vietnam War mural many people found objectionable. It also seems likely that if a public school had silenced a valedictorian who wanted to praise vegetarianism or assail racism, the mainstream media and the American Civil Liberties Union would have blasted the decision as an outrageous act of censorship.

The ACLU has criticized the free speech defense of student-initiated prayer at graduation, cautioning that such a position would force schools to grant equal access to all speakers of all viewpoints on a first come, first served basis—a less relevant concern when the issue is one of free expression for speakers already chosen on an ideologically neutral basis. It is also worth noting that the Colorado ACLU has championed the right of black students to wear a ceremonial African cloth over their graduation gowns as a protected form of expression.

An even better case that strict separationism can turn into censorship can be made in a suit currently pending in the U.S. Court of Appeals for the 3rd Circuit in Philadelphia, brought by the parents of Medford, New Jersey, schoolboy Zachary Hood. In 1996, each child in the boy's first-grade public school class was asked to choose a story to read aloud. Zachary's selection, the story of the reconciliation between the brothers Jacob and Esau from *The Beginner's Bible*, was deemed inappropriate by the teacher, even though it contained no mention of God or miracles. He was told that he could read it to her in private but not to the entire class.

In 1999 a three-judge panel of the 3rd Circuit ruled that the teacher acted properly, agreeing with the school's rather wobbly argument that permitting the story to be read in the classroom would have sent a message to the impressionable kiddies that "the teacher or the school endorsed the Bible." Late last year, however, the full court vacated that decision and agreed to consider the case, which may go all the way to the Supreme Court.

The Catholic League warned that if another theater company picked up the play *Corpus Christi*, it would "wage a war that no one will forget."

It would be difficult to dispute the religious conservatives' claim that the treatment of Zachary Hood or of the Niemeyers reflects "viewpoint discrimination" against religious speech. It is fairly clear that in these instances it is the exclusion rather than the inclusion of religion that may "discriminate against, or oppress, a particular sect or religion," as Justice William Brennan put it in the 1963 ruling *School District of Abington v. Schempp*, which found mandatory school prayer unconstitutional.

But it would also be disingenuous for the anti-secularists to claim that they want religion to be treated as just another viewpoint in the marketplace of ideas—a viewpoint which can be defended but can also be attacked and even ridiculed, like any other idea. Indeed, the same people who wax poetic about defending religious liberty for Christians can get very unhappy with the wrong kind of speech about religion. Just as religious conservatives now couch their demands for prayer in public schools in the "liberal" language of free speech, their attempts to squelch what used to be called sacrilege are couched in the politically correct language of anti-bigotry and opposition to "hate speech." The charge of "Christian bashing" (or "Catholic bashing") has been directed, for instance, at the ABC show *Nothing Sacred*, which questioned Catholic doctrine on birth control and priestly celibacy.

In 1998 news of a Broadway production of Terrence McNally's play *Corpus Christi*, depicting a gay Jesus-like character, sparked a predictable firestorm. The Catholic League for Religious and Civil Rights launched a letter-writing campaign demanding that the production be canceled. It is true, of course, that a protest is not censorship. But when the Manhattan Theater Club decided to cancel the play due to threats of violence and

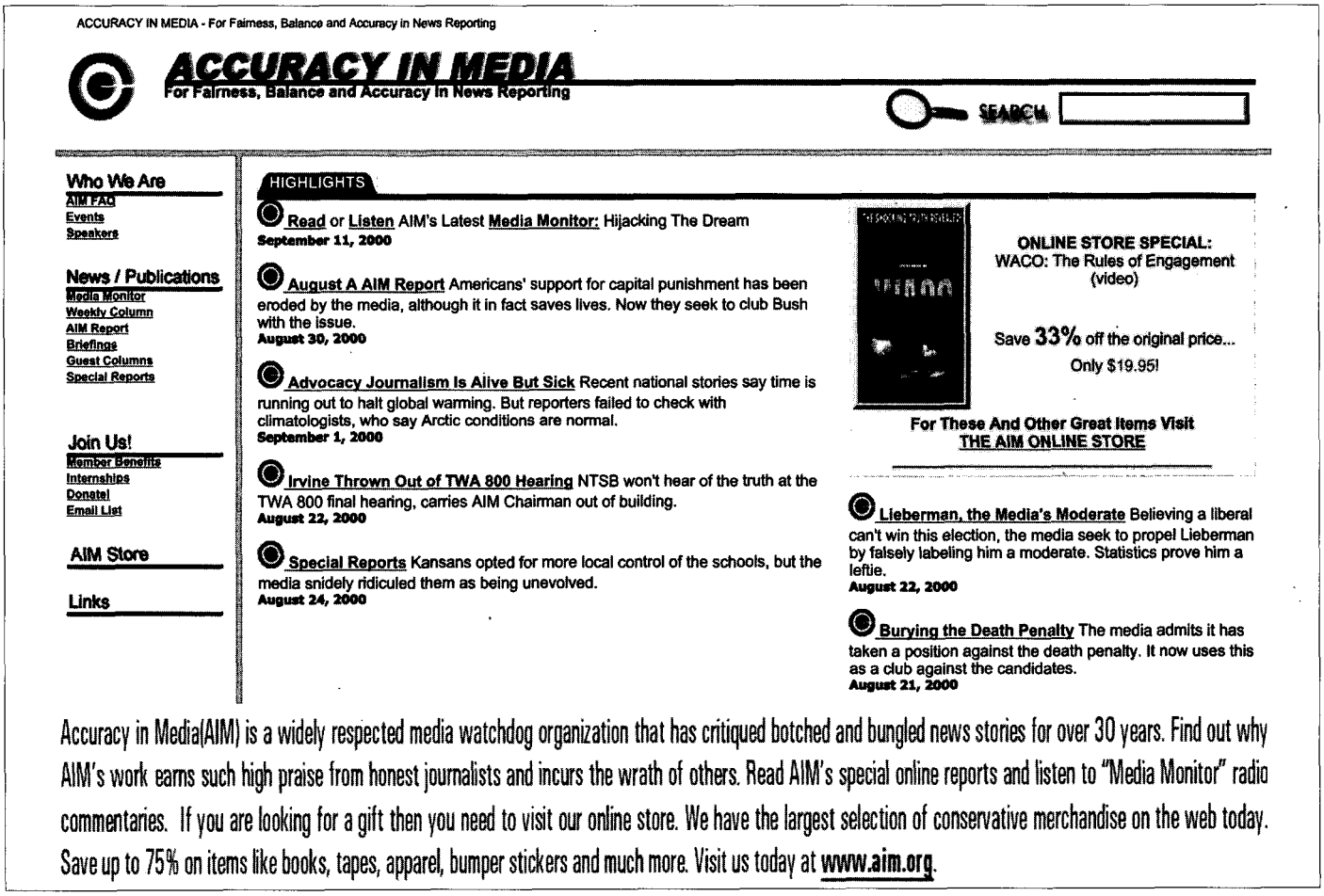
arson, the Catholic League's jubilant reaction did not show a strong commitment to free speech. While formally deploring the threats, the league warned that if another company picked up *Corpus Christi*, it would "wage a war that no one will forget." (The theater eventually revived the production after coming under fire from the press and from authors.) Catholic League President William Donohue explicitly, and favorably, compared the anti–*Corpus Christi* protests to the actions taken by racial, ethnic, and feminist groups against speech they find offensive.

And in July, in what may be the most creative use of hate speech phraseology to date, L. Brent Bozell's Media Research Center ran an ad accusing CBS of "condoning religious bigotry." *Early Show* host Bryant Gumbel had been caught on camera saying "What a fucking idiot!" after an interview with the Family Research Council's Robert Knight, who had defended on religious grounds the Boy Scouts' exclusion of gays. Even if Gumbel was referring to Knight and not, as some have claimed, to a CBS staffer, it is noteworthy that he used no slurs referring to Knight's faith. (Is it racist to call Al Sharpton a fucking idiot?) Nonetheless, Bozell invoked CBS' firing of sports oddsmaker Jimmy "The Greek" Snyder for televised comments about the innate racial superiority of black athletes and concluded that "racial bigotry on CBS is dealt with unequivocally; religious bigotry on CBS is met with a disinterested yawn."

In an essay published in *The New York Times Magazine* last January, legal commentator Jeffrey Rosen noted that the strict separationism endorsed by the courts in the early 1970s, which held that the government could not support any religious activity in any form, has given way to "a very different constitutional principle that demands equal treatment for religion." Under this doctrine, Bible study clubs and prayer groups can function on public school property on a par with other student groups, and parochial schools can receive federal aid for special education programs on a par with other schools. (School vouchers that would subsidize tuition at religious schools remain a more contentious issue.)

Rosen insightfully links the crumbling of the wall between church and state to the rise of cultural diversity: "In an era when religious identity now competes with race, sex and ethnicity as a central aspect of how Americans define themselves, it seems like discrimination—the only unforgivable sin in a multicultural age—to forbid people to express their religious beliefs in an increasingly fractured public sphere." As Rosen concludes, the resulting expansion of freedom of religious expression may well be a healthy development for public life. But the examples of race and sex also point to certain dangers. While the new appreciation of diversity can liberate discussion and expression, it can just as easily narrow the range of acceptable speech in order to protect sensitivities.

Contributing Editor Cathy Young (CathyYoung1@cs.com) is a research associate at the Cato Institute.


ACCURACY IN MEDIA - For Fairness, Balance and Accuracy in News Reporting
ACCURACY IN MEDIA
For Fairness, Balance and Accuracy in News Reporting
SEARCH
Who We Are
AIM FAQ
Events
Speakers
News / Publications
Media Monitor
Weekly Column
AIM Report
Briefings
Guest Columns
Special Reports
Join Us!
Member Benefits
Internships
Donate!
Email List
AIM Store
Links
HIGHLIGHTS
Read or Listen AIM's Latest Media Monitor: Hijacking The Dream
September 11, 2000
August A AIM Report Americans' support for capital punishment has been eroded by the media, although it in fact saves lives. Now they seek to club Bush with the issue.
August 30, 2000
Advocacy Journalism Is Alive But Sick Recent national stories say time is running out to halt global warming. But reporters failed to check with climatologists, who say Arctic conditions are normal.
September 1, 2000
Irvine Thrown Out of TWA 800 Hearing NTSB won't hear of the truth at the TWA 800 final hearing, carries AIM Chairman out of building.
August 22, 2000
Special Reports Kansans opted for more local control of the schools, but the media snidely ridiculed them as being unevolved.
August 24, 2000
ONLINE STORE SPECIAL:
WACO: The Rules of Engagement (video)
Save 33% off the original price...
Only $19.95!
For These And Other Great Items Visit
THE AIM ONLINE STORE
Lieberman, the Media's Moderate Believing a liberal can't win this election, the media seek to propel Lieberman by falsely labeling him a moderate. Statistics prove him a leftie.
August 22, 2000
Burying the Death Penalty The media admits it has taken a position against the death penalty. It now uses this as a club against the candidates.
August 21, 2000
Accuracy in Media(AIM) is a widely respected media watchdog organization that has critiqued botched and bungled news stories for over 30 years. Find out why AIM's work earns such high praise from honest journalists and incurs the wrath of others. Read AIM's special online reports and listen to "Media Monitor" radio commentaries. If you are looking for a gift then you need to visit our online store. We have the largest selection of conservative merchandise on the web today. Save up to 75% on items like books, tapes, apparel, bumper stickers and much more. Visit us today at www.aim.org.

SHAKY GROUND

WHY FLEXIBLE RULES AND REASONABLE REGULATORS ARE A BUILDER'S WORST NIGHTMARE

A couple of years ago, my wife and I were looking at a small house in a New England town that I will call "Hampshire." The property also encompassed a strip of land in the town to the north of us—let's call it "Yorkshire." Our intention was to buy and then expand the house, but we discovered two obstacles to doing so. The first was that the lot was "nonconforming" because it was just one acre in an area zoned for two-acre lots. To do any work, then, we would need a zoning variance. The second obstacle was a creek 80 feet from the house; its proximity meant we would need approval from the conservation authorities of both towns. To help us decide whether to go ahead, we called Hampshire Town Hall and spoke to the clerk, a pleasant woman who cheerfully answered our questions. Yes, she told us, most likely we would be able to expand. According to her, about 95 percent of all variances were approved.

BY GENE CALLAHAN

We weighed our decision. The asking price was very reasonable, and we loved the rolling property with its seasonal creek. But what if we weren't permitted to expand? We could always sell and move on. But this would entail two moves in two years, as our first child was on the way, and the house, without expansion, soon would be too small for us. With some trepidation, we finally made an offer on the house.

Having secured the house, we proceeded with plans to expand. That's when we discovered we would have to persuade the Hampshire Planning and Zoning Commission, the Hampshire Conservation Commission, the Yorkshire Planning and Zoning Commission, the Yorkshire Conservation Commission, and the Yorkshire/Hampshire Health District that we were worthy of the additional space.

Our architect, who had grown up in Hampshire, agreed to guide us through the approval process. I knew I had made the right choice when, at our meeting with the Hampshire Planning and Zoning Commission, one of the board members introduced our architect to another member by saying, "You remember Phil from the Hunt Club, don't you?" The architect and I had a site walk with the inspector from the health district, and another one with the building inspector. We attended one zoning meeting. We also attended conservation meetings—four of them.

I came to know the members of the Hampshire Conservation Commission like family—like my family when I was a teenager, as they considered whether to let me take the station wagon out on a Saturday night. The dominant personality on the commission was a fellow named Fred, who was also, not surprisingly, the chairman.

Fred was always smiling. He smiled at odd, inappropriate times, such as when saying, "You see, if we don't have an MA-103F Soil Test Form completed and in front of us, we're just not going to be able to proceed with your application." The smile seemed intended to assure people that Fred's request, however arbitrary and cumbersome it seemed, flowed from a fountain of wholly benign eco-concern.

One of Fred's main concerns was that everyone who came in for an approval would plant a particular species of river weed called "sedge" along the edge of their wetlands. In almost every application, Fred brought up the subject of sedge, always with great gusto. I began to wonder if Fred had ties to the National Sedge Growers Association. Exactly which plants would border your wetland was a matter of utmost concern to him. He made one supplicant agree not to plant a lawn within 20 feet of her creek as part of the terms of her approval. She had offered not to use any "chemical" lawn products, but Fred wasn't buying it. No, he explained, some future owner might be tempted to hire "ToxoLawn" to maintain that patch. The applicant was responsible not only for her own acts involving the wetlands but also the potential acts of future owners. She was enjoined from undertaking activities that, while not harming the wetlands in themselves, might tempt the guy who owns the house 20 years from now into harming them.

At one meeting we met the God of Boredom, whom we came to call Soil Engineer. He had been hired by some poor soul who was on his fourth trip to see the commission for a four-lot subdivision. The applicant also brought along a couple of fellows in suits—his attorney and his builder. Soil Engineer attempted to lull the board into submission by describing, in detail, the geological history of the lot from the Cretaceous Period to modern times. As the North American and European continental shelves separated, I found myself biting my lip to shock myself awake. I was sure that if my head slumped forward during the meeting, it would count against me when the vote on my property came.

I CAME TO KNOW THE MEMBERS OF THE CONSERVATION COMMISSION LIKE FAMILY—LIKE MY FAMILY WHEN I WAS A TEENAGER, AS THEY CONSIDERED WHETHER TO LET ME TAKE THE STATION WAGON OUT ON A SATURDAY NIGHT.

Soil Engineer began discussing "drumlins." Don't ask me what these really are—by this stage of the meeting I was in a semi-hallucinatory state, and my recollection is that it was inside a drumlin that Frodo Baggins first encountered a barrow wight.

Fred leaned forward with a knowing look on his face. The tension in the room heightened from none to the smallest amount above none that can possibly be measured. Had Fred found, amid the nearly pure white noise of this monologue, the melody that would resolve the dispute?

"Were the drumlins formed while the glaciers were advancing or while they were retreating?" he asked.

Could this really be the deciding factor? "Retreating? Good. Approved!" No—Fred was educating an audience whose knowledge of Ice Age New England he knew to be sorely deficient. Suddenly, the applicant exploded at the commission. All over the room doodling ceased and heads picked up. He launched into a tirade about how other, larger projects had been approved, because, he implied, the applicants were wealthy developers who gave generously to the campaigns of various town officials.

Predictably, the commission was not amused. Fred graced the supplicant with a gentle smile.

"We understand that you're upset," he said, "and we'd like to help you. But we're going to need some more information from you before we can proceed."

Fred then listed inconsistencies to be resolved, measurements to be made, obscure plant species to hunt for on the land. The applicant, duly chastised, shuffled off with his contingent.

Finally, after three hours of listening to other people's cases, our turn had come. "Callahan?" the clerk said. We indicated that we were present. The clerk opened the folder for our case. "Oh, the Town of Yorkshire hasn't responded to our letter of advisement," he said. "You'll have to come back for the next meeting." In two weeks.

Another notable person on the commission was the fellow whom we came to call Yes Man. He was the lonely representative of the idea that perhaps the town should have the burden of proving that there is ecological harm, rather than forcing the applicant to show that there isn't. At a certain point he would get bored with drumlins and soil microorganisms and blurt out, "I forward the motion that we approve this application." Occasionally his boredom would carry the day, as other commission members would begin to feel the same ennui and just want things ended with the conclusion that was probable anyway.

After three meetings with the conservation commission, Yes Man forwarded his motion, and we gained our approval. But we were not done with them yet. We made a change to our building plans that did not affect the footprint, and filed the changed plans with the building inspector. Since our impact on the wetlands hadn't changed, the architect felt that we weren't required to go back to the conservation commission. Apparently, he was wrong. Our builder was confronted by the town conservation officer, who threatened to shut the job down because of the change in plans. My architect called me and told me to bring my attorney to the next meeting. The sight of an attorney seemed to change the commission's mood. The board members were immediately conciliatory and merely admonished us by saying that they would "appreciate being told about these things."

In his popular 1996 book *The Death of Common Sense: How Law Is Suffocating America*, Philip Howard contends that the chief legal problem in America today is not that there are too many laws but that the law is not being applied "reasonably." Bureaucrats, he argues, are not given sufficient discretion when making their decisions. The result is that our obsession with "a government of laws, not men," is destroying government's ability to act rationally. "Relaxing a little and letting regulators use their judgment is the only way to liberate our judgment," Howard writes. He moves so far from the principle of the rule of law as to recommend regulating each of America's 4,000 most polluting factories individually.

Well, here we were in a situation where the bureaucrats had plenty of discretion and were very reasonable, yet we were worse off than if what we wanted to do were simply forbidden. In that case we just wouldn't have purchased the property. Instead, we had months of uncertainty after the purchase. We wound up spending dozens of hours of our time and thousands of dollars in fees for our architect's and our lawyer's hours. It was necessary to talk very politely and sound very eco-friendly to the conservation commission, especially when dealing with Fred. He could turn stubborn on a project and request information not possibly available at the meeting, sending the hapless applicant out to spend more cash and time determining the ratio of green-backed to yellow-backed slugs on his land.

At one meeting my wife felt compelled to hide the cover of a conservative magazine she was reading, for fear of offending some liberal on the board. Board members would pop over to our property at odd times of the day and walk the land. These intrusions into our private lives were made possible by the discretion these boards enjoy. What you want to do is forbidden by default, but if you're nice and don't put up a fuss about their choosing your landscaping plants or crashing your croquet party, they'll let your project go forward. As F.A. Hayek remarked in *The Constitution of Liberty*: "It used to be the boast of free men that, so long as they kept within the bounds of known law, there was no need to ask anybody's permission or to obey anybody's orders. It is doubtful whether any of us can make that claim today."

Our case, while daunting to us, was actually resolved comparatively easily. When I described its history to John Charles, environmental policy director at the Cascade Policy Institute, an Oregon-based policy research center, he expressed genuine surprise that we had been able to move forward so quickly. In contrast, REASON Contributing Editor James DeLong describes in his 1997 book *Property Matters* the case of a Pacific Grove, California, property owner who spent over $600,000 and three and a half years to get permission to build a residence on a 1.1-acre lot.

It is precisely the discretionary power of local land use authorities and the "reasonableness" of their procedures that lead to cases that drag on for months or years. Since there is no simple rule deciding whether a particular project can go forward, regulators must invest large amounts of time to show that they have considered all factors and have not been unfair or negligent in their final decision. In fact, the system gives them strong incentives never to make any decision at all—if they can merely delay decision until the project fades away, no one can blame them for deciding improperly.

In describing the difficulties of Andrew Varlow, who wished to expand on his Marin County, California, property, DeLong comments: "The planners fret about the size of the house, the effect on views, future development in the area, the possible impact on real estate prices, and the project's 'inconsistency with the goals' of the planning group (whatever these may be; the meeting minutes do not say). No standards are announced. Varlow and his people have spent over two years

on the project without any firm guidance that 'you can do this but not that.'"

Philip Howard would contend that the regulators should be held responsible for being dilatory, but this merely inserts another layer of administration making another round of discretionary decisions. After all, weren't the Marin regulators just using their legal discretionary power to withhold a decision until they felt certain that Varlow's project was "consistent with their goals"? By what guideline could the regulators be judged to have taken "too long"? And who will judge the regulators who judge the regulators?

During the third of our conservation commission hearings, our architect pointed out to the board members that we had a child on the way. They all nodded in understanding, and our approval came soon thereafter. Should this have been relevant to their decision? If we were childless pensioners, would we have had less right to expand? Hampshire is a Republican stronghold—might the decision have been different if we had been prominent Democrats? What would our odds have been if we had been a gay couple hoping to build in a fundamentalist Christian community? Blacks in an otherwise all-white town in the Deep South?

I have no idea if the applicant who yelled at the commission had any factual basis for his accusations of corruption. But a system in which a bureaucracy has discretionary powers over individual citizens will always lead to suspicions of this sort. Each case must be decided on its own, unique merits, so it becomes an entirely subjective judgment as to whether different parties received "equal" treatment.

The man who wanted the four-lot subdivision had much more trouble with conservation than we did. Because his motive was simply "profit," his standing with the commission was lower than that of a young and growing family needing living space. A commission tasked with protecting wetlands wound up assessing the moral worth of various applicants' projects.

Howard is wrong, and the defenders of the rule of law are right. Hayek, one of the greatest 20th-century advocates of the rule of law, saw that it is the keystone to liberty. People living under the rule of law have clear-cut guidance as to whether they are permitted to undertake some activity. This clarity leaves us free to plan our own actions, because we understand, vis-à-vis the legal system, what the consequences of those actions will be. All of us understand that if we kill someone and are caught, we will go to prison. Occasionally there will be gray areas in the law, such as determining when a killing might be in self-defense. But our town had set up a situation where the majority of contemplated development was in gray areas. In our case, it was never clear to us exactly what would decide the fate of our petition. As Hayek put it, "Nobody disputes the fact that, in order to make efficient use of the means at its disposal, the government must exercise a great deal of discretion. But...under the rule of law the private citizen and his property are not an object for administration by government, not a means to be used for its purposes. It is only when administration interferes with the private sphere of the citizen that the problem of discretion becomes relevant to us; and the principle of the rule of law, in effect, means that the administrative authorities should have no such discretionary powers in this respect."

In *Simple Rules for a Complex World* (1995), Richard Epstein argues that we should generally favor rules that offer a clear delineation of what is and isn't permissible over more complex rules that require discretion on the part of those enforcing them. He illustrates the principle with the example of lawsuits that involve harm caused jointly. For instance, your car struck mine after you failed to obey a stop sign one night. I, however, was driving without my headlights on, making it difficult for you to see me. Law that requires an "accurate" determination of how much each of our errors contributed to the accident necessitates great discretion on the part of those deciding the case—and leads to interminable trials with large legal expenses on both sides.

BOARD MEMBERS WOULD POP OVER TO OUR PROPERTY AT ODD TIMES OF THE DAY AND WALK THE LAND. THESE INTRUSIONS INTO OUR PRIVATE LIVES WERE MADE POSSIBLE BY THE DISCRETION THESE BOARDS ENJOY.

Epstein's suggested solution is elegant: simply split the difference, awarding half of the damages that would have been awarded had the plaintiff not also been negligent. Although this eliminates all discretion, and may seem to be unfair in some cases, Epstein contends that most cases wind up near this mid-way mark anyway. The huge administrative costs involved in the futile attempt to arrive at a "reasonable" apportionment of blame swamp the meager gains from the few cases where the result of a 50-50 split of losses is manifestly unjust.

Our problem was not that the town had set rules restricting our use of our property. Such rules are necessary, since some property uses significantly affect neighbors and, if permitted, would allow the property owner to impose large costs on others. Preventing us from building a nuclear weapons facility on our rural land in a residential neighborhood does not in a significant way impair our liberty. If we are hoping to con-

struct such a factory, we know in advance to avoid properties with residential-only restrictions, and therefore we are still able to plan.

But the town does not really intend that its restrictions be uniformly enforced. As DeLong points out, regulators prefer vague restrictions that allow them great leeway. This type of restriction requires an administrative apparatus with large discretionary powers, which serves chiefly to enhance the power of bureaucrats. The bureaucracy avoids a public outcry because it drives up the cost of new construction, limiting its supply and raising the prices of existing homes. For the majority of homeowners in town who do not intend to expand in the foreseeable future, the large losses suffered by a small minority are an acceptable cost of protecting their own investment.

DeLong recognizes the basic problem when he writes: "Several things are necessary to restore the balance [in regulation]. The first is to assert the boundaries and certainties of property rights. Cities need to get their basic rules in place, and then let people act, without more nit-picking detailed review. A recent news article reported on the success of city planning in Portland, Oregon. What does Portland do? Well, for one thing, it follows its own zoning laws. If the code says you can build apartments somewhere, that is what you are allowed to do."

Howard fails to see that it is in the market where citizens can properly exercise their discretion over property use and that once government is given discretion in this regard, it has the arbitrary power to decree one citizen's aims more worthy than another's. Although Howard cites Hayek, he does not seem to comprehend his message. Howard has no wish to limit the state's power to infringe upon private property rights as long as it does so "reasonably."

If you enter my house and begin to negotiate with me about what I may watch on TV, the issue at hand is not how reasonably you do so. You have intruded into my private sphere and are unwelcome, however reasonable your requests may seem to you or others. The U.S. Constitution does not say that Congress should "make no unreasonable laws respecting an establishment of religion"; it says that Congress shall make no laws at all establishing a religion. Congress is not enjoined from "unreasonably abridging the freedom of speech" but from any such abridgment. Of course, these rights may come into conflict with others, and the government is well within its bounds in preventing a religious group from practicing infanticide or in punishing free speech if it is slanderous. But these are rare exceptions to otherwise clear rules. As DeLong says, "What is needed is a restoration of government of law rather than government by whimsy."

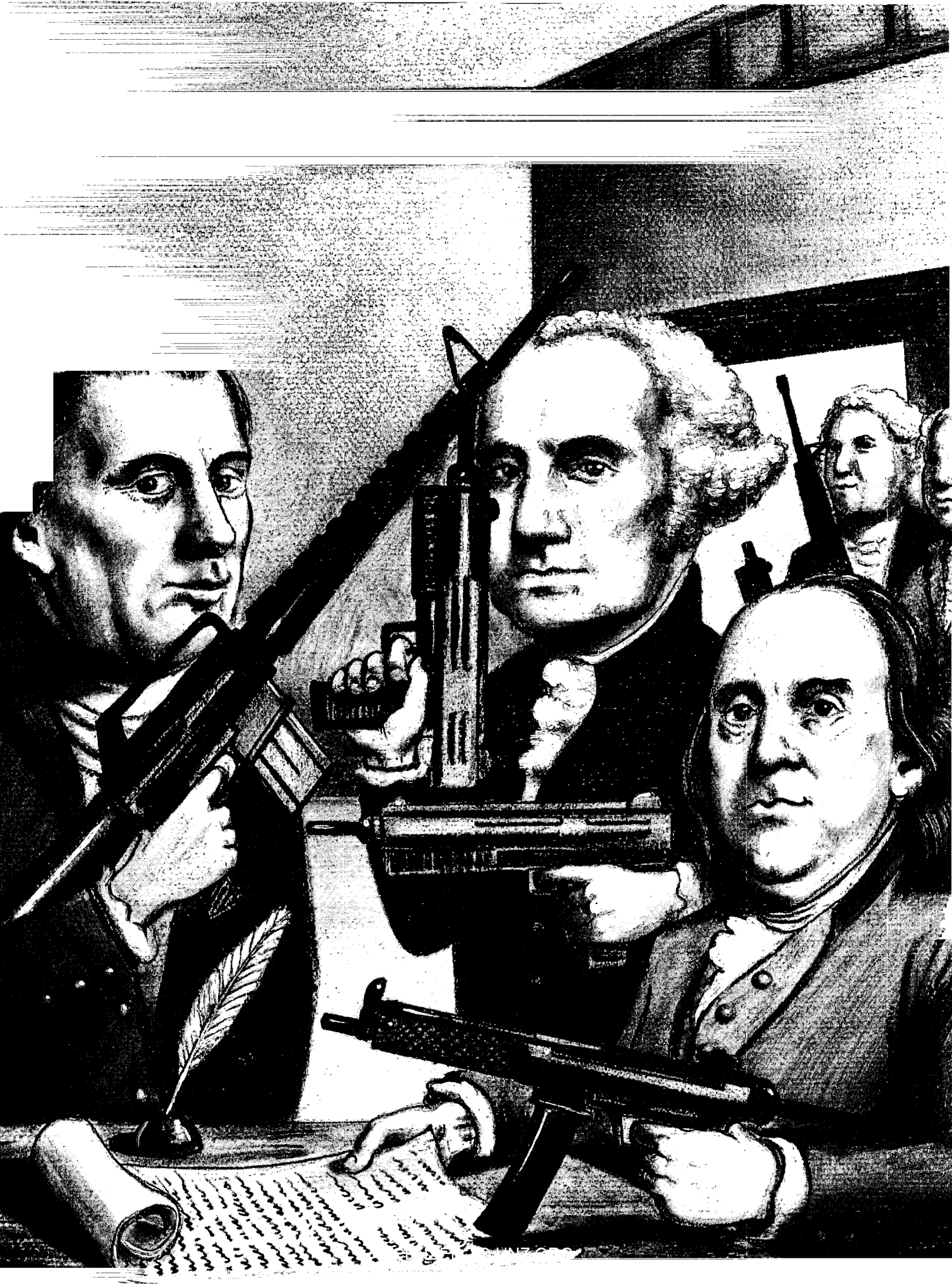
It is possible to conceive of other, realistic arrangements that would both preserve the property owner's liberty and achieve environmental and planning goals. A government, be it local, state, or federal, can set minimum guidelines that say when a project may proceed without, for instance, a wetland permit—if, say, it is more than 100 feet from any area that is below water more than six months a year. That government can then sell increasingly expensive permits that allow transgressing these limits, up to a point where certain activities, such as draining a pond, may be strictly prohibited. Strictly prohibited should mean that no exceptions can be granted, resulting in clear guidelines for the property owner. Where such restrictions impose a significant burden on property owners when compared to normal use in the area, takings law should apply, and the state should pay for the loss of normal use. (For instance, if two-acre zoning is the norm for an area, a restriction that limits a landowner to one house on a six-acre lot should require compensation.)

These permits should be made fungible, so that a market can develop in them. DeLong notes that such a system of transferable development rights has already been established in many municipalities. With a market in these rights, property owners could plan activities on a site with a reasonable degree of confidence by calculating whether the project would be worth the cost, including the purchase of the necessary rights. The revenue raised could be used to buy and preserve undeveloped properties. If the people in a town want to limit development, this purchasing of open land is by far the fairest and most efficient means available. The townspeople are not able to impose the cost of their preference for open space on isolated individuals, who have had a portion of their property rights seized in order to create a public good.

It is not only economically sensible to establish clear property rights in regard to wetlands, open space requirements, historic districts, and other land use issues. It is also morally correct. Even if a certain course of action is beneficial to a community and requires the abnegation of certain property owners' rights, this does not justify imposing the entirety of the cost of this community benefit upon a few individuals. DeLong notes that "these decisions [to restrict property use] involve a judgment by the supporters of the restriction that someone must sacrifice, and your friends and neighbors have selected you."

A healthier environment, historic preservation, open space: These are not goods that most of us should steal from a few of us. If we want them, we should all be prepared to pay our part of the cost. And citizens who want to use their property as they see fit should not have to grovel before boards that exercise arbitrary power over their lives. Having a "standing rule to live by" makes any tradeoff involved manifest and will ultimately result in both more respect for a community's true values and a more secure right to plan our individual futures. ◆

Gene Callahan (gcallah@erols.com) is a regular contributor to National Review Online, mises.org, lewrockwell.com, and Java Developer's Journal. *He is working on a book,* Economics for Real People, *to be published next year by the Ludwig von Mises Institute.*



Concealed Weapons

The controversial book *Arming America* has the facts all wrong.

By Joyce Lee Malcolm

Five months before the publication of *Arming America*, without seeing the text, *The New York Times* endorsed its author's claim that few guns, let alone a gun culture, existed in America prior to the Civil War. This was just the beginning of the media blitz that would greet the book. A glowing treatment by Garry Wills adorned the cover of *The New York Times Book Review*; congratulatory reviews appeared in *The Washington Post*, the *Chicago Tribune*, and other papers; the author, Emory University historian Michael Bellesiles, was interviewed on National Public Radio and had an essay in *The Chronicle of Higher Education*. Reviewers have hailed *Arming America* as a "myth-buster" that "changes everything," a book destined to raise the gun control debate to a more "fact-based and rational level."

If the point at which America became a "gun culture" seems too academic an issue to arouse such intense excitement, the tributes on the book's dust jacket make it clear that something else is afoot. "Thinking people who deplore Americans' addiction to gun violence have been waiting a long time for this information," says Stewart Udall, the former congressman and secretary of the interior. For those still uncertain why thinking people have been waiting for this, or what the "everything" is that has changed, Cornell University historian Michael Kammen cites the book's "inescapable policy implications." As those blurbs suggest, *Arming America* has been enthusiastically embraced by gun control advocates as an aid in their effort to persuade Americans (and their courts) that they do not have, and never have had, a constitutional right to be armed.

Any book that can raise the level of debate on any subject, especially one as emotional as gun control, is certainly welcome. The key to a book's value, however, is not whether its findings are those any of us "have been waiting a long time for" but whether they are, in fact, correct. Before considering whether *Arming America* has indeed shattered a myth, it might be helpful to reflect on why gun control advocates are so excited about a book that, even if accurate, seems only tangentially related to their cause.

Arming America: The Origins of a National Gun Culture, by Michael A. Bellesiles, New York: Alfred A. Knopf, 640 pages, $30

Behind the hype is the cantankerous debate over the meaning of the Second Amendment's single sentence: "A well regulated Militia being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." This debate has fallen prey to a passionate political agenda. Proponents of gun control are convinced that guns in the hands of individuals are to blame for violence in America. Their effort to strictly control, if not eliminate, those guns conflicts with the belief held by most Americans that "the right of the people to keep and bear arms" applies to them. Hence the Second Amendment has been subjected to intense and critical scrutiny.

Some commentators have argued that the awkwardly worded article guarantees only members of a well-regulated militia, such as today's National Guard, a right to be armed. According to this view, the amendment protects a "collective right" for particular groups. By 1975 the issue had become so confused that the members of an American Bar Association committee charged with sorting it out threw up their hands and announced, "It is doubtful that the Founding Fathers had any intent in mind with regard to the meaning of this Amendment."

Since then scholars from various fields have delved into the matter and found overwhelming contemporary evidence that the Founders inherited and meant to guarantee an individual right, and none to support the notion that a collective right was intended. This body of work has persuaded such eminent constitutional scholars as Lawrence Tribe and Leonard Levy that the Second Amendment protects an individual right.

Opponents of this view have come up with new, increasingly tenuous arguments. First came the claim that the phrase *bear arms* was used exclusively in a military context, so its inclusion in the Second Amendment must refer only to militia members. Yet in early American discourse, *bear arms* often referred to simply carrying a weapon, as a 1998 Supreme Court decision found it still does. (The Second Amendment, of course, also protects a right to "keep" arms, but so far there has been no attempt to redefine *keep*.) Next came the theory of Carl Bogus, an employee of Handgun Control Inc., that the Second Amendment was the result of a conspiracy between Northern and Southern states to guarantee weapons to keep slaves under control. Among the problems with the Bogus approach is the absence of any direct evidence for such a conspiracy. Then there was the "comma theory," which argued that the stem of the Second Amendment's single sentence, which refers to "the right of the people," can be eliminated because it is set off by commas. The amendment would then read, "A well regulated militia being necessary to a free state...shall not be infringed." One wonders what would hap-

MATTHEW STRAUSS

pen if the entire Constitution were interpreted by removing passages surrounded by commas.

Now Michael Bellesiles' book has appeared with a new argument: Guns were rare before the Civil War, and Americans had little interest in owning them. Is Bellesiles correct that neither a gun culture nor many guns existed in early America? He defines a gun culture as a fixation on firearms, and he is probably right that no such general obsession existed until the mid-19th century, if then. But his claim of a nearly gun-free America, the real basis of his argument, is more problematic. Guns, he asserts, were expensive, inefficient, rare, and restricted. He says they were heavily regulated, were owned only by a wealthy few in England, played little role in the conquest of the New World, adorned few colonial mantles, were seldom used for hunting, and were borne by few militiamen and even fewer of their friends and neighbors.

Bellesiles is in good company in finding fault with early muskets; they were cumbersome and inaccurate. He is also among many who criticize the American militia as a fighting force, although few scholars would agree with him that it was "little more than a political gesture." His novel claims about the numbers and uses of firearms, however, demand careful examination. Readers and reviewers are entitled to assume that a professional historian will present evidence fully and fairly, although we might disagree with his interpretation. And any author can make mistakes. But Bellesiles' "myth busting" findings are not supported by his sources. Moreover, he presents a skewed selection of records, dismisses contradictory information, and even alters the language of quotations and statutes. A few examples must suffice.

Bellesiles' discussion of English customs and rights, which are the basis for American use of firearms, provides a starting point. He informs us that the few guns available in England from the 16th through the 18th centuries were severely regulated and restricted to the rich. It's true that there were restrictions on handguns, but when Henry VIII converted his militia from bows to muskets in the 16th century, thousands of Englishmen had to "find" a gun and be trained in its use. Indeed, Henry urged residents of every city and town to "have and keep in every of their houses any such handgun or handguns, of the length of one whole yard...to the intent to use and shoot the same" against the time "when Need Shall Require."

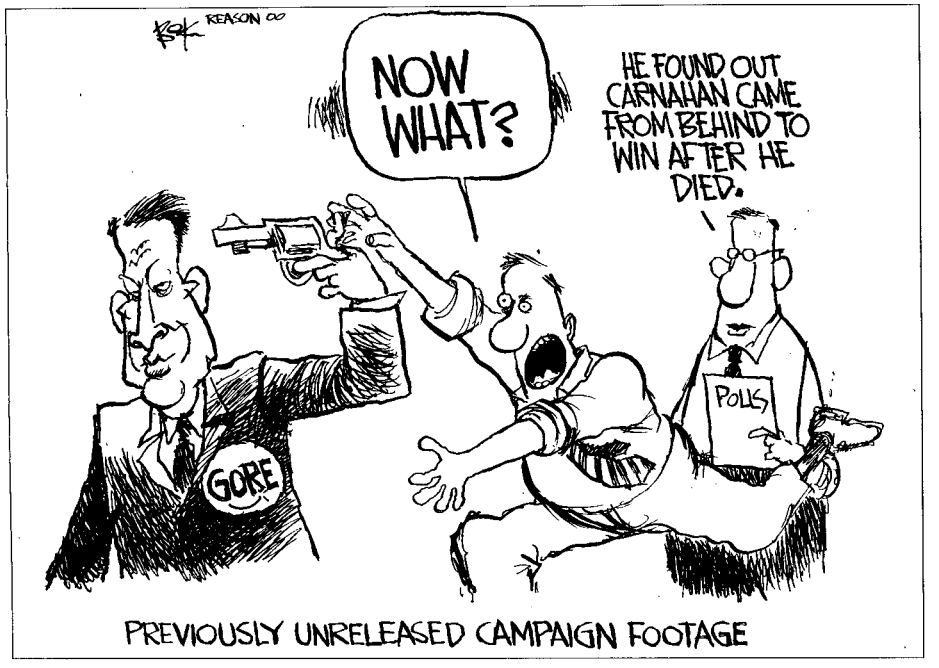
In the 17th century, numerous gangs of armed robbers prowled English highways, and poor laborers were routinely hauled into court for misuse of their firearms. Yet Bellesiles assures us that "only the aristocrats among private citizens owned the frightening new firearms" and that guns "rarely saw use outside of warfare." He claims that most personal violence in early modern England arose from contests between troops of Morris dancers! Neither source he cites for this astonishing allegation supports that claim, a discrepancy not confined to that footnote alone. Readers are informed of the right to have arms that the English Bill of Rights granted to Protestants—then some 90 percent of the population—only as proof that "the English preferred to maintain a tight control of guns."

Michael Bellesiles' eagerness to "bust a myth" about America's gun culture has induced him to create one.

On to America. Here Bellesiles finds firearms rare, expensive, regulated, and useless, a contention made easier by his equation of firearms with military muskets, ignoring handguns, fowling pieces, and other light weapons. He reports that Americans "often perceived the ax as the equal of the gun" and refers to "the complete failure" of early settlers to care for guns "or learn their use." Bellesiles writes that, while colonial legislatures "occasionally" required citizens to own firearms, they appreciated "how improbable it was for them to fulfill that goal." In fact, such laws were not occasional; they were routine, insistent, and enforced. Poor Virginians were provided with guns at reduced cost or set to work to earn their weapons. Historian Harold Gill, who examined 572 colonial Virginia inventories, found guns listed in nearly 80 percent of men's estates. Bellesiles claims weapons were usually housed in government arsenals, not homes. But Connecticut was typical in requiring every householder to "always be provided with and have in continual readiness" a musket or other firearms.

Bellesiles attacks as myth the idea that Americans owned firearms for hunting. He reports that 80 travel accounts he surveyed, written in America between 1750 and 1860, fail to mention hunting with guns. Yet many of the very narratives he cites, such as the memoir of Indiana frontier life by Rush Baynard and Anne Newport Royall's *Letters from Alabama*, describe the general use of guns for hunting and self-defense. And while the Englishman Charles Augustus Murray, one of the writers cited by Bellesiles, found few "gentlemen" hunters in the 1830s, he noted that "nearly every man has a rifle, and spends part of his time in the chase." Bellesiles omits dozens of other travelers who describe widespread ownership of firearms, among them Alexis de Tocqueville. The famed French observer describes a typical "peasant's cabin" in Kentucky or Tennessee as containing "a fairly clean bed, some chairs, a good gun."

Bellesiles' main proof for the absence of firearms is his analysis of more than 11,000 probate inventories from 1765 through 1859. He found that only 14.7 percent of 18th-century inventories even mentioned a gun, and many of these were described as old or defective. Probate records, however, are an uncertain source: These inventories don't mention bequests prior to death; families sometimes take items before the probate is taken; and some probates deal only with real estate, not personal property. Harold Gill found it not unusual for a probate inventory of a known artisan to include nothing indicating his trade. Still, Bellesiles insists that probates contain an exact reference to



every item, no matter how trivial, even those that had been passed on to a friend or relative before death.

Although this exhaustive probate research forms a major part of his evidence, Bellesiles does not give the numbers of probates for each time period or any particular county, only a list of county names. Where he is specific, he has distorted the findings. Take the case of 186 inventories from early Providence—unusual, he reports, in that 48 percent mentioned guns. "If one could imagine these 186 men as a militia company," Bellesiles tells us, "half would be unarmed and a third armed with guns too old for service. And yet they would have been one of the best-armed forces of their time." Intrigued, James Lindgren, a professor of law at Northwestern University, examined the inventories and found that "virtually everything Bellesiles said about these records was false." Not 48 percent but 62 percent mentioned guns, of which not the 33 percent Bellesiles claimed but only 9 percent were described as old. Lindgren also examined probates from one of Bellesiles' frontier counties and compared the numbers of guns listed to the other sorts of property mentioned. He found more guns than knives, more guns than books, more guns than Bibles.

Finally, we come to a more disturbing sort of misrepresentation. Bellesiles quotes George Washington's report on the state of the militia in 1756: "Many of them [are] unarmed, and all without ammunition or provision." Bellesiles adds that Washington found in one company only 25 of more than 70 men "had any sort of firearms." Yet historian Clayton Cramer found Washington was referring not to the general state of the militia, as Bellesiles would have us conclude, but, in Washington's words, to "the odd behaviour of the few Militia that were marched hither from Fairfax, Culpeper, and Prince William counties, Many of them unarmed."

Of the Militia Act of 1792, which enrolled all free white men between the ages of 18 and 45, Bellesiles writes that "Congress took upon itself the responsibility of providing [their] guns, and specified that within five years all muskets 'shall be of bores sufficient for balls of the eighteenth part of a pound.'" In fact, the law states that "every citizen so enrolled and notified, shall within six months thereafter, *provide himself* with a good musket or firelock" and other accoutrements (emphasis added). For tallies of firearms, Bellesiles uses a series of Massachusetts and federal censuses of militia firearms as if they were complete surveys of all civilian guns, and he omits tallies from federal arsenals.

Enough said. Point after point meant to illustrate a nearly gun-free early America is, upon examination, unsupported by the copious sources Bellesiles cites. He sidesteps counter-evidence. He ignores or dismisses statements by John Adams, Patrick Henry, Noah Webster, Richard Henry Lee, Thomas Jefferson, James Madison, and others to the effect that their countrymen were well-armed.

New views of history are useful. They provoke historians to re-examine their ideas and their evidence. Sometimes that evidence is found wanting, but not this time. Michael Bellesiles' eagerness to "bust a myth" about America's gun culture has induced him to create one.

Joyce Lee Malcolm (jmalcolm@bentley.edu), a professor of history at Bentley College and a senior fellow in the MIT Security Studies Program, is the author of To Keep and Bear Arms: The Origins of an Anglo-American Right *(Harvard).*

The Last Picture Postcard

By Lynn Scarlett

A guy who likes Holiday Inns and sees some virtue in outlet malls can't be a snob. A lack of pretension is part of what enables well-regarded and prolific novelist Larry McMurtry to travel America's interstate highways with pleasure. McMurtry isn't necessarily crazy about urban sprawl and its lower-density version, urban scatter. And he's no glutton for punishment: Where he can, he steers clear of the "automotive killer bees" of big-city traffic jams. Still, McMurtry enjoys the America that so many highbrows deride: the America of chain stores, Burger Kings, and roadside billboards.

Roads: Traveling America's Great Highways, by Larry McMurtry, New York: Simon & Schuster, 208 pages, $25

These days, critics of our national landscape and culture often lament the loss of

go to page 51

CHIP BOK

Bigger and Badder

More books are more available than ever before. So who's complaining?

By Brian Doherty

Among American writers, there's a long and revered tradition of attacking markets as the enemy of a rich and vibrant literary culture. Hawthorne did it, Melville did it, and now Andre Schiffrin, the former top dog at Pantheon, does it in *The Business of Books: How the International Conglomerates Took Over Publishing and Changed the Way We Read* (Verso). Where Hawthorne moaned about the "damned mob of scribbling women" who dominated the bestseller lists of his day and Melville rationalized his loss of a popular audience as a sign of his true genius, Schiffrin lays into Big, Bad Business in an insider's memoir that draws on 40 years in publishing.

The consolidations of publishing imprints and the demise of small, "independent" book stores at the hands of national chains, he complains passionately, have been disasters for serious writing and thinking in America. Now head honcho at the New Press, Schiffrin says that the conglomerate owners of most American publishers expect every book to make historically unlikely profits, abandoning the old principle whereby a few bestsellers threw off enough cash to subsidize noble tomes that everyone knew would never make a dime.

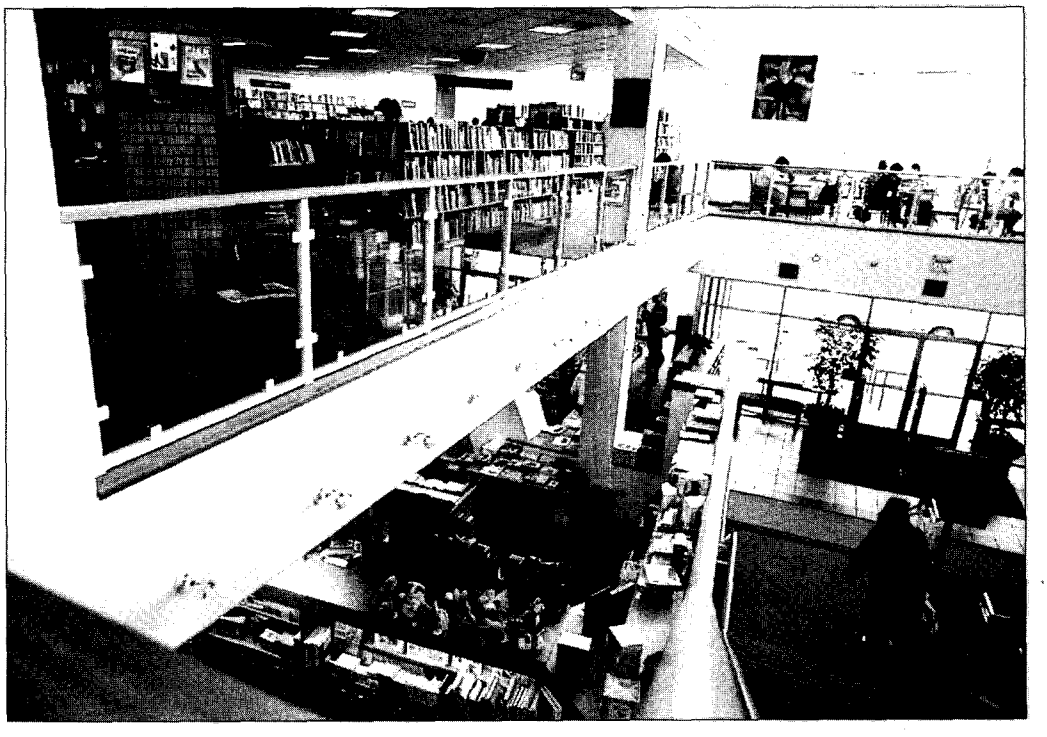
What's more, according to Schiffrin, the big money boys have abandoned publishing serious policy books of a leftist bent, or, same thing, won't do what it takes to make them huge successes. Predictably, he recommends antitrust actions and government subsidies as solutions to the book industry's supposedly woeful state.

Some of Schiffrin's specific complaints have bases in fact. Over the past few years, there has been a huge consolidation in the publishing industry. (The widely discussed 1998 takeover of Random House—itself a major conglomerate that includes imprints such as Alfred A. Knopf, Pantheon, Ballantine, and Bantam—by German juggernaut Bertelsmann was simply the highest profile instance of a broad trend.) And national chains have surpassed independent book stores as the place where people like to buy books. (In 1997, according to the Book Industry Study Group, 25.2 percent of books were sold at chains vs. 17.2 percent at independents. The rest were sold through book clubs and other outlets, including used book stores, discount clubs, and drug and grocery stores.)

But from a reader's perspective, such insider concerns are wholly besides the point. Schiffrin and other old publishing hands may care whether today's corporate shills are keeping faith with the ghost of Alfred Knopf. Readers, however, care about a different issue: Is a wide range of books appealing to a wide range of interests widely available?

Anyone who has spent 10 minutes in a Borders or Barnes & Noble superstore—bad guys in Schiffrin's book—who doesn't see that the answer is a ringing, resounding "yes" is simply blind.

Even Schiffrin isn't too willing to argue that point. In a recent phone interview, I asked him about Borders and its tremendous selection. He is neither fool nor knave, and could not deny that, hey, it's a great bookstore. Still, he offered, there is a certain *je ne sais quoi* about the independent bookstore. Variety of voices, and all that. Skill and passion in owners and employees. One of the things indie bookstores can offer, says Schiffrin, is a



Borders

HOLLY FREEDMAN

knowledgeable and dedicated staff made up of actual book lovers, and not just minimum-wage drones.

Fair enough. During my last visit to a Borders in Los Angeles to examine Schiffrin's book, the clerk had no idea who Schiffrin was or what book he had just published. His initial computer search on the title came up with nothing. He then tried an author search that worked just fine. He helpfully walked me over to the literary criticism section, where six copies of Schiffrin's book excoriating the state of the book market sat, just waiting to be taken home.

The Business of Books asserts that cultural decisions are now made by grim bean counters who only green-light projects with massive sales potential.

And all around me was similar bounty: Sixteen different titles by or about Walter Benjamin, 20 books by or about Michel Foucault (an author Schiffrin is proud to have introduced to the mass American market while running Pantheon), hundreds of offerings from small foreign presses and university presses, shelves of books dedicated to gay concerns (including huge Tom of Finland art collections), selections in every specialty that matched or beat what even the best independent store has.

There was 100 feet of serious history, 20 feet of philosophy, books on radical labor leaders from such nonradical presses as Harcourt Brace and Plume—even a huge scholarly biography of Ho Chi Minh from Disney's Hyperion imprint. If books of leftist politics are no longer dominating American intellectual life, it's not for lack of titles.

In *The Business of Books*, Schiffrin pushes a popular leftist trope, that "market ideology" has come to rule the world since the bleak days of Thatcher and Reagan, that all decisions, even cultural ones, are now made by grim bean counters who will only green-light projects with massive sales potential. Yet he himself presents the evidence that the policies he decries—throwing huge advances at celebrities, ignoring the midlist, ballooning executive salaries, general crassness—are not rewarded by the market. Rupert Murdoch's HarperCollins, he notes, writes off $270 million in unearned advances. When S.I. Newhouse sold Random House to Bertelsmann, it was reporting a whopping 0.1 percent in annual profits. Not everything done by a conglomerate is in fact an example of "the application of market theory to the dissemination of culture." Schiffrin describes cases where people with more money than sense are losing some of that money. Now *that's* the free market at work.

So is this: In the face of everything Schiffrin decries—consolidation, S.I. Newhouse's philistinism, university presses doing more middlebrow nonfiction and fewer pure scholarly monographs, and the death of many small booksellers—most Americans have more access to a wider range of books of all qualities and types than ever before.

Even—or perhaps especially—the left seems to be feasting during this supposed famine. Certainly Schiffrin is doing just fine for himself and his noble causes over at the New Press, one of whose first books was a bestseller on a serious political issue from a left perspective, Studs Terkel's *Race: How Blacks and Whites Think and Feel About the American Obsession.*

So if in fact books like that aren't being published, it's not because of market ideology run amuck; it's because the conglomerates are being bad businesspeople. Schiffrin ends his book by saying, "We must hope that in the coming years more people...will realize how dangerous it is to live in a culture with a limited choice of ideas and alternatives."

Indeed. We can also hope that in the coming years people will realize how blind many cultural critics really are. ◆

Brian Doherty (bdoherty@reason.com) is an associate editor of REASON.

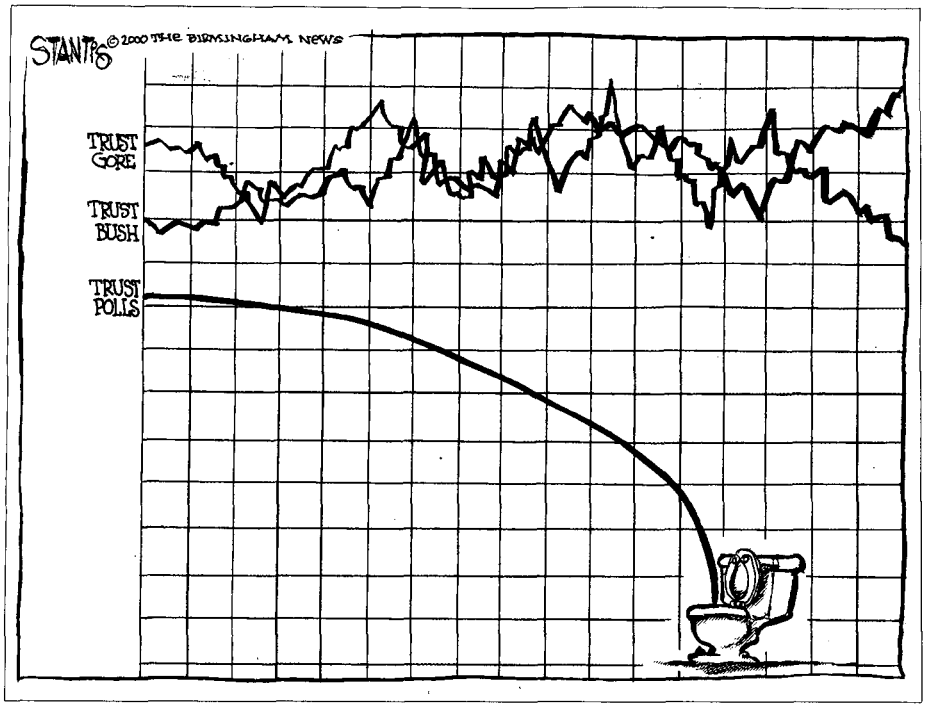
"community," by which they usually mean self-contained small towns or patches of big-city neighborhoods where grandpa sits on the brownstone stoop at dusk. Or they rail against the eruption of rural "starter castles" amid once-working cattle ranches that have been transformed into urban cowboy retreats. Often, critics openly abhor the commonplace and the crass, deploring above all "consumerism."

McMurtry, however, is an iconoclast. It would be going too far to say he celebrates urban sprawl or vanishing cattle ranches or the American thirst for store-bought things. But his travelogue, *Roads*, gives at least two cheers for contemporary America. A *Chicago Tribune* reviewer,

"Place itself cannot be homogenized," writes McMurtry. "A thousand McDonald's will not make Boston feel like Tucson."

writing about McMurtry's Pulitzer prize–winning epic *Lonesome Dove*, said that it had, "both in general and in details, the authority of exact authenticity." So it is with *Roads*. McMurtry brings us America as it is. And for the most part, he enjoys it.

McMurtry especially likes America's great interstates. He likes Holiday Inns because they are predictable and, above all, comfortable. Others seek authenticity by prowling seldom-used back roads to find quaint, tucked-away hamlets that have a turn-of-the-(last)-century ambiance. Not so McMurtry. He blasts down the nation's interstates at "modestly illegal speeds" and admires their functionality. Their aim, he writes, "is to move you, not educate you." On one jaunt he manages 1,100 miles in a day and a half. Along with thousands of American truckers, he exalts in this accomplishment: "What made it possible to travel that distance...was the great road itself, a highway designed for just that type of travel. I never had to go more than one hundred yards off the highway for food, gasoline, and a rest room....Des Moines



was bypassed so neatly that I didn't have to slow down at all."

When he breezes past outlet malls in the Midwest, he doesn't smirk at these cathedrals of consumerism. Instead, he muses that they have improved many lives—at least the lives of Midwesterners: "For people mired in the depths of what one might call the inner midwest...the arrival of outlet malls is a blessing. They may have to lead pretty dull lives, but at least now they can *shop*, see what's new at Liz Claiborne, or get their kids nice overalls at Oshkosh B'gosh." Such shopping marvels, he opines, may fall short of Armani, but they're "still better than what was there before."

It's not that McMurtry eschews the more highbrow cultural stuff packed away in museums, financed by the National Endowment for the Arts, or analyzed in the pages of *The New York Review of Books*. In fact, his book is part highway travelogue and part literary criticism. As he travels down the interstates, he blends commentary on the latest billboard—those announcing microsurgical vasectomy reversal figure prominently in *Roads*—with observations about Hemingway, Fitzgerald, Longfellow, and dozens of other American writers, past and present.

But McMurtry is ready and willing to find points of interest beyond the nation's museums, national monuments, and literary masterpieces. He delights in the quirkiness of the stuff that draws regular American folk off the highways, such as road signs about the world's largest prairie dog or a five-legged cow. The billboard for the 500-lb., man-eating clam was so irresistible that it actually lured him off the road and out of his car. (His curiosity remained unfulfilled, because the store housing this carnivorous wonder was closed.)

Of course, even a big-city critic might find some redemption in these roadside circus wonders. Kitsch, after all, is always in style. But McMurty also thinks commonplace American pastimes are OK. The riverboat and Indian casinos that have cropped up all over the interior U.S. during the past decade, he says, "provide midwesterners with a way to be a little wicked without traveling all the way to Vegas." More important, perhaps, they "provide at least a modest amount of glamour in a notably glamourless place."

What is most striking about McMurtry—and what sets him apart from many who cover the same territory—is his ability to see detail and diversity where others profess to see only homogenization. Where the cultural elite alternately fears and sneers at a homogenized America filled with big, look-alike chain stores and lifeless Levittowns, McMurtry is explicit in his rejection of the claim that "it all looks alike." Despite chain stores and repetitive suburbs, he says, America does not all look the same: "It doesn't, and it won't, no matter how many McDonald's and Taco Bells cluster around the exits. There are, after all, McDonald's in both Moscow and Paris, but few would argue that Russia and France look the same."

It is his eye for detail—and his willingness to find authenticity in the ordinary—that enables McMurtry to make such a claim. The lighting, for example, is always different—"the winter light in Sault Ste. Marie, at the head of the 75, will never be like the light over the Everglades, at the bottom of that road. Eastern light is never as strong or as full as western light." His bottom line: "Place itself cannot be homogenized. Place will always be distinct. A thousand McDonald's will not make Boston feel like Tucson."

It's not just his ability to see detail but the pleasure that he takes in everyday American comforts and cultural escapades that separates McMurtry from the culturally fussy. McMurtry's father was a Texas rancher who admired greatness "in things that mattered to him." For McMurtry's dad, this meant bulls. "Sometimes," the son recalls, "because of the magnificence of some of these great animals, [my father] would come to a full stop and just sit looking, arrested by admiration as a stroller in an art museum might be when brought face-to-face with a great picture—a Rembrandt, a Matisse."

For the modern motorist like McMurtry, today's equivalent of a prime specimen bull is a good interstate, whose beauty lies in its extreme functionality and convenience. On his latest round of interstate trips, McMurtry discovered a new wonder: Valet Park, a ubiquitous parking service, in Los Angeles. Hollywooders, he discovered, "may be willing to spend their lives on the freeways or beside the freeways, but one thing they are increasingly reluctant—indeed, unable—to do is park their own cars. In Santa Monica, West Hollywood, Beverly Hills, Westwood, even laundries have Valet Park. Grocery stores have Valet Park." McMurty is quite taken with Valet Park (as am I). McMurtry, who confesses that he is even "thinking of building a novel around it," sees it "as the newest *real* advance in California living,"

SCOTT STANTIS

another example of Los Angeles "on the cutting edge."

While others rail against the automobile or outlet malls, McMurtry saves his venom for the Border Patrol. From reading *Roads*, one gets the idea that McMurtry is a guy who likes freedom, hard work, and some degree of chaos—or at least spontaneity. The urge to migrate, he insists, is a natural human inclination. So, too, is the urge to seek a better life. McMurtry, thus, does not care for the Border Patrol: "However mild and courteous the Border Patrolman may turn out to be, the image that registers in the mind, as you drive slowly toward the uniformed policeman with the big dog, is an image from the iconography of Nazism. The association might be unfair, but it's also unavoidable. The struggle of the poor brown people of the south and the more affluent northerners who seek to retard their entry is unrelenting and... corrosive. It poisons the whole border."

For related reasons, McMurtry doesn't care for "spic-and-span" Minneapolis. But he likes St. Paul, Minnesota, which "has all the virtues of the melting pot: easygoing, tolerant, with plenty of watering holes and lots of people watering at them."

This is the America that McMurtry seems to like pretty well. He marvels that sexploitation films from the early '70s could show up at an Amoco truck stop in the middle of nowhere (and he seems highly conversant with their contents). He gets a big uplift from the American creativity embedded in a handmade sign on a wall in Sheyenne, North Dakota. The sign says, simply, "Nothing was ever lost through enduring love of North Dakota." McMurtry is no romantic. He doesn't pretend to love Sheyenne, or North Dakota for that matter. But he does feel gladdened by the sign, because someone felt that way about North Dakota and put it in words on a wall.

Lynn Scarlett (lynns@reason.org) is vice president for research at the Reason Foundation.

From Russia With Malice

By Sean McMeekin

At the height of the Kosovo war, with the U.S. embassy in Russia besieged by bazooka-carrying, bottle-throwing Slavic nationalists, two maverick American journalists based in Moscow publish a detailed map directing anti-NATO activists to nine Western military contractors' local branch offices, just in case anyone might wish to ransack them. A year later, during the "historic" election campaign that would see Russia's first ever "democratic" transfer of power, the danger-loving duo court the Kremlin's wrath by aggressively promoting a shut-down-the-vote campaign to sabotage President Putin's inevitable self-coronation.

Flush with cash from their first book deal, the serial provocateurs then offer a $1,000 reward to anyone "who helps bring about the arrest or firing" of various enemies guilty of "crimes against human decency." Leading the luminaries are drug czar Barry McCaffrey, accused of invading Americans' civil liberties, and the U.N.'s chief administrator in Kosovo, Bernard Kouchner, flagged for the statistical offense of "8,892 counts of fictional murder."

Such deliberate provocations are almost unthinkable in the staid environment of American political journalism, but they are the stock in trade of *the eXile*, a controversial biweekly tabloid (circulation 25,000, plus a big Web audience) published in Moscow since 1997 by two angry Americans, Mark Ames and Matt Taibbi. Their new book might best be described as the joint memoir of two guerrilla commanders emerging unscathed from a series of bloody raids on the media establishment. The book blends new commentary with features and artwork reproduced exactly as they first appeared in the tabloid. The result is not always easy on the eyes, but it is an excellent introduction to Ames and Taibbi's brand of writing. That is to say, it is partisan, cruel, and often side-splittingly funny. I do not recommend it for the easily offended.

the eXile: Sex, Drugs, and Libel in the New Russia, by Mark Ames and Matt Taibbi, New York: Grove Press, 256 pages, $16

Ames and Taibbi have carved out a singular niche for themselves. American libel lawyers can't touch the paper in Moscow, and Russian censors pay little attention to a tabloid that reaches only the minuscule Anglophone minority of voters. In this legal no-man's-land between two governments, *the eXile*'s editors enjoy virtually unheard-of license to write and say what they want about prominent figures, without fear of retaliation.

They have a lot of fun with this freedom, playing pranks that take advantage of politicians' pretensions. *The eXile*'s most famous stunt saw no less than Mikhail Gorbachev entering negotiations to secure a paying position as "perestroika coordinator" for the New York Jets. Self-promoting former World Bank bigwig Charles Blitzer, head of that organization's Moscow office, could not resist the urge to pontificate when Ames, posing as a reporter for a fictitious newspaper called *Moskovskaya Svoloch* (in Russian, *Moscow Bastard*), left a message on his machine asking for comments on a precipitous one-day drop on the Russian stock market in 1997. By calling back, Blitzer revealed that he had not bothered to learn the language of the country "whose economy he had once more or less administered for years." He also tripped on the first question he was asked, explaining that Mongolia's exchange had followed Moscow's down because of the recent Asian crash. (In fact, the Mongol market rose 6 percent the same day Russia's fell by 20.) Here was a world-renowned economic guru, *the eXile* crowed, who "couldn't even predict events that had already happened."

Besides tweaking the powerful with practical jokes, Ames and Taibbi do some real damage with their political reporting. Years before anarchists took to the streets of Washington, Taibbi was painting the World Bank as a bustling den of thieves that lent money to Russia only if it would hire teams of high-priced foreign consultants—while simultaneously insisting that

go to page 55

Muerte a Las Vegas

Will fine art kill Sin City?

By Charles Paul Freund

"The market economy," architect Rem Koolhaas recently told *Wallpaper* magazine, "has lobotomized political consciousness. We need to construct a place for this again." An admired writer on social and cultural issues as well as a superarchitect in the class of Le Corbusier and Frank Lloyd Wright, Koolhaas is playing a leading role in constructing politics out of design. Among his many projects is a retail tower in San Francisco for the edgy fashion chain, Prada. The building is made of foam, a project Koolhaas characterizes as "a deliberate metaphor for the state of architecture." He's also engaged in a Harvard study on communism, in which, in his words, "We will look at how communism, from 1922 to 1980, was able to organize itself relatively successfully, from the Elbe to the Pacific, while maintaining its idealism."

But his most publicized project involves a pair of art display spaces. Koolhaas has been chosen by the Guggenheim to design its new galleries...in Las Vegas. This extraordinary tableau—the elite Guggenheim and the political Koolhaas working together in the capital of kitsch—is a remarkable act by the art establishment.

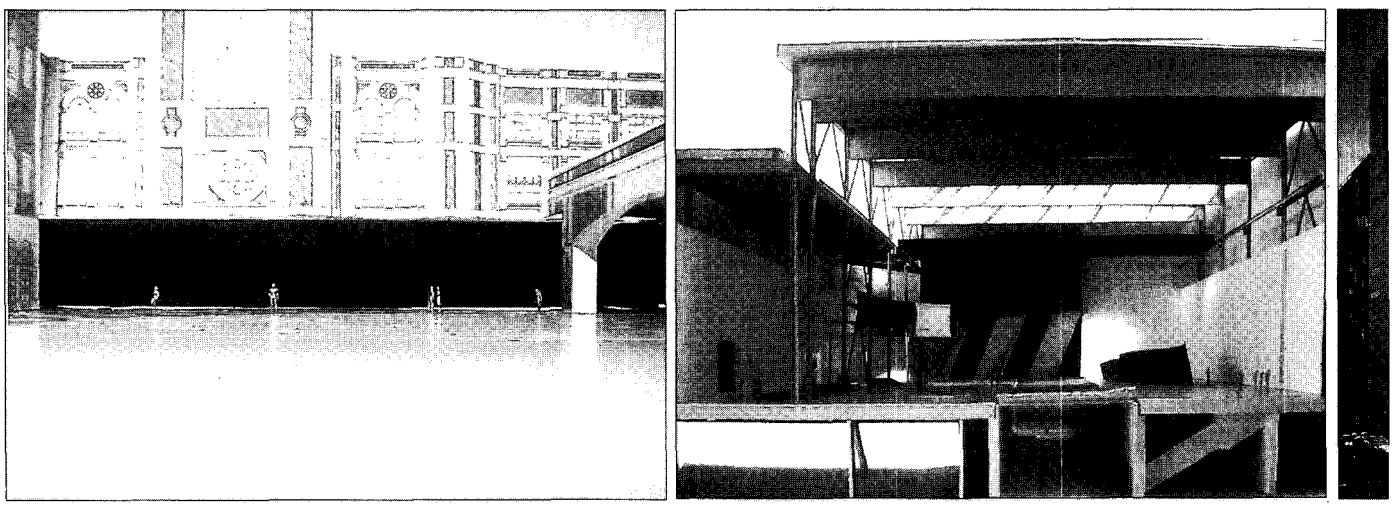
In awarding the projects—a small gallery attached to the Venetian casino and a large, freestanding museum—to the 55-year-old Dutch designer, the Guggenheim has seemingly transformed its project. For years, the museum and its curators have been at the center of a roiling controversy over the changing role of such art institutions; specifically, whether in their zeal for bigger crowds of paying gawkers, such museums were abandoning their role as stewards of art and as uplifters of public taste.

According to some critics, the Guggenheim reached a nadir of pandering when it mounted its controversial "Art of the Motorcycle" exhibit in 1998. That exhibit drew the biggest crowds in the museum's history, but detractors were disturbed both by the concept and by the fact that the show was underwritten by Harley-Davidson. (Curiously, no one wondered whether motorcycle design would be affected by an entombment in an elite gallery, as jazz has been undone by its entombment in elite concert spaces and its debilitating appropriation by elite tastemakers.)

But the Guggenheim has since enjoyed an enormous triumph, not so much with the artworks it displays as with the buildings in which it displays them. The Guggenheim structure in Bilbao, Spain, designed as a flowing mass by Frank Gehry, has drawn hordes of people who just want to see the building. And, after all, the original Guggenheim structure in Manhattan, designed by Frank Lloyd Wright, established the institution's image in the first place. If you want to appreciate its founding audacity, try hanging art on a round wall.

The Guggenheim's plans to build in Las Vegas originally seemed like another effort to chase ticket-buyers; its plans were inspired by the spectacle of tourists lining up in 1998 to see the Picassos hanging over the slots in the new Bellagio casino. But the choice of Koolhaas changes the Vegas Guggenheims into something else: an act of architectural *engagement.*

"Engagement" is Koolhaas's central working concept; what he wants to engage with is the commercial world that he regards as politically and socially lobotomizing. Architects, he has argued in his writings, are guilty of retreating before an onslaught of commercialism. He accuses them of working in an "architectural ghetto" of universities and a few elite clients, when they should be out challenging and rebuild-



LEFT, CENTER: OMA 2000; RIGHT: DAVID HEALD

ing the real world where everyone else lives.

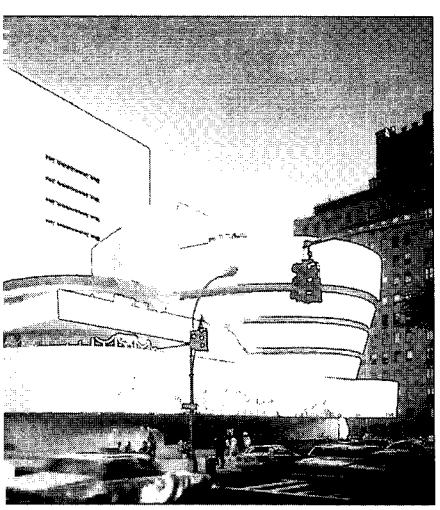
Of course, the conceit that art has the power not merely to reflect, but actually to *transform* the world it addresses was a fundamental idea of the modernist avant-garde. The notion has thus far proved to be a ghetto of its own, and may have much to answer for. Some critics have charged that the urge to transform is ultimately a totalitarian aesthetic. But what is going on in Vegas is not the totalization of kitsch so much as its opposite.

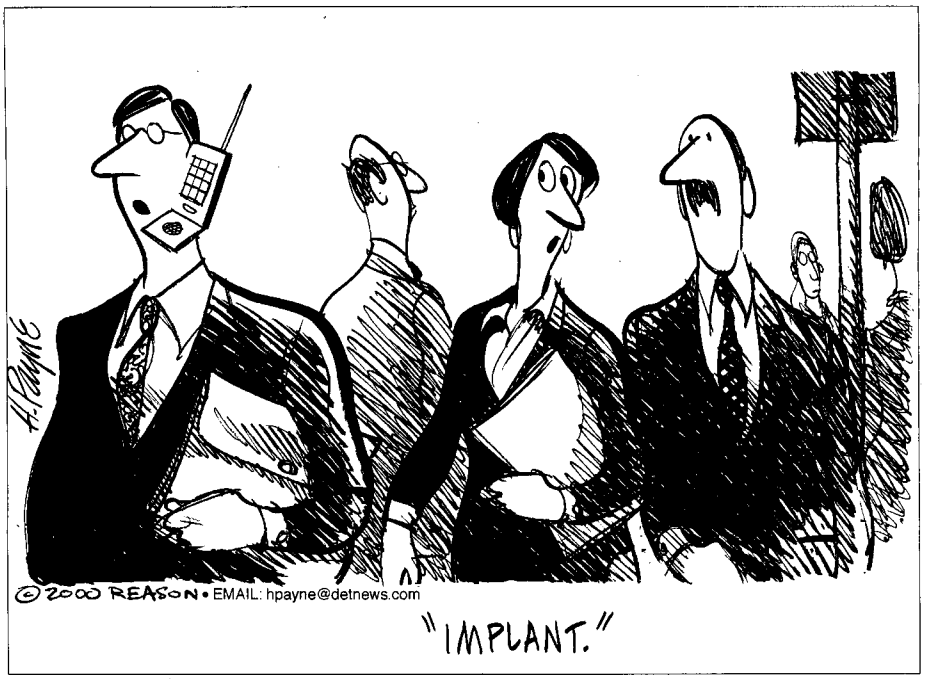
Las Vegas, as architects Robert Venturi, Denise Scott Brown, and Steven Izenour argued 25 years ago in *Learning From Las Vegas*, is actually a case study in the lessons of pleasure. The city is a display of enticement and illusion; its recent reinvention as a series of hotel theme parks only heightens those basic appeals. Whatever Koolhaas and the Guggenheim may think they are creating, they will have to find a way to make their art spaces work within this context of pleasure.

The Guggenheim may very well know this. The opening exhibit in the smaller of Koolhaas' galleries, when it opens late next year, will be a reprise of "The Art of the Motorcycle."

Charles Paul Freund (cpf@reason.com) is a REASON *senior editor.*

Models for Guggenheim's Las Vegas spaces (left, middle); Guggenheim in New York (right)





HENRY PAYNE

"excess" staff of Russian state enterprises such as farms, hospitals, and schools be axed. One remarkable pyramid scheme in which World Bank loans disappeared involved an "Investor Protection Fund" set up precisely to give aid to Russian victims of previous pyramid schemes. *The eXile* discovered that the purported beneficiaries never saw a kopek of the money collected for them, which instead ended up lining the pockets of the Western advisers hired to administer the fund.

The ubiquity of such Yeltsin-era outrages committed in the name of "reform" has lately become conventional wisdom among the Western media, but you didn't hear much about such shenanigans back in the euphoric days of 1997, when most newspapers were naively trumpeting the venal lies of Russia's "Young Reformers." Nor has *The New York Times* really owned up to how much damage self-promoting Western consultants and financial advisers did to Russia's economy. (The *Times*' 1999 *mea culpa* "Who Lost Russia?" was widely praised, but as *the eXile* pointed out, it took Russia's "oligarchs" to task while letting American aid profiteers off the hook.)

Whoever was ultimately most at fault for the Russian debacle, *the eXile*'s unfettered editorial independence allowed Ames and Taibbi to break the story first. That's something that has become a familiar event for them. The financial collapse of August 1998? They predicted a liquidity meltdown and government default weeks before it actually happened. The troubling moral balance sheet in Kosovo? Read through "101 Reasons Why NATO's War Sucks," published just days after the war began. The incessantly hyped Y2K bug that never appeared? *The eXile* laid odds on the impending catastrophe on December 29, 1999: "Tchya, right. And our butts might fly out of monkeys."

Ames and Taibbi are often prescient, but their flair for obscenity has undermined the extent to which their missives are taken seriously. An American reading *the eXile* for the first time in Moscow (or on the Web, at www.exile.ru) is bound to be offended. The paper's sophomoric club reviews rank Moscow nightlife haunts on a "Fahkie" factor, which unapologetically instructs horny foreign men where best to go to find some easy action. The editors serenade three-star hot spots with vulgar, topically updated slogans. Thus, after the financial crisis of 1998, they advised patrons that visiting a bacchanalian bar such as the Hungry Duck was "like parking your life savings in a Russian bank account: you're gonna get faaakhed whether you like it or not."

Ames and Taibbi do not merely violate the standards of political correctness. They browbeat and bludgeon them, stomping so sinfully on contemporary pieties that there

really isn't a chance for critics to reply. *The eXile*'s defenders customarily claim that such obnoxious antics are "redeemed" by the paper's serious political reporting, but that strikes me as a cop-out. I am not sure *the eXile*'s freewheeling obscenity and its frequently lethal muckraking can be so easily disentangled. Taibbi's widely feared "Press Review" column does not mince words: In the brutal "Moscow's Worst Journalist" competition, a series of commentaries he created this year to coincide with the successive rounds of the March Madness NCAA basketball tournament, the eventual winner's profile piece on President-Elect Putin was likened to a porn film called *500 Blowjobs.*

By systematically exposing the mutual back scratching and plagiarism in foreign correspondents' lazy reportage, Taibbi is able to show why the establishment media so often get the big stories wrong. Had well-paid reporters at America's newspapers of record paid any attention to the evidence of economic corruption all around them, instead of swallowing the lies of Russian government spokesmen (and copying each others' half-baked pieces), the Russian financial collapse of 1998 would not have shocked the Washington policy making establishment as if it had happened out of the blue. Instead, the press corps wrote glowing profiles of the thieves who—often on the strength of their ties to the U.S. government—were cynically robbing Russian taxpayers of their nation's crown industrial jewels. This deserves only one name, and Taibbi has not been afraid to deploy it: *pornography.*

The unflinching use of obscenity also makes Mark Ames' dark, deliciously amoral "Moscow Babylon" column wellnigh irresistible. Ames is like an X-rated Camille Paglia, taking her favorite theme —Mother Nature's crushing tyranny over all of us—where she has never ventured to bring it, because Ames draws his conclusions not from literature but from his own often ugly experiences. In a typical column he might casually toss off a mock epic poem chronicling the adventurous journey of a hungry young microbe from his sexual partner to himself. By the final stanzas Ames will have worked himself up to a lyrical post-coital climax in which he is at last forced to unleash an army of industrial strength antibiotics to repel the little monsters now gnawing on his own pubic hairs.

Aside from such confessions, much of what Ames says in the new book is rather banal—but then, it's the kind of stuff few others have the guts to say in public. Take his retort to the stentorian rhetoric of America's drug war. "PEOPLE DO DRUGS," he deadpans, "BECAUSE THEY'RE FUN." Speaking from long personal experience, he assures the uninitiated that "it's no different from alcohol or roller coasters, except that drugs are A LOT BETTER."

Ames's gushing odes to heroin and speed could make even fellow indulgers blush, but to understand his obsession it helps to consider the wiles of his rhetorical enemy: The Clinton administration, after all, has been surreptitiously inserting its anti-drug propaganda into prime-time TV programming, as revealed recently in *Salon.* Taibbi, although in his personal life rather less hedonistic than his co-editor, all but fell on his sword in a column excoriating *The Washington Post* for trying to hush up the *Salon* story. He unleashed a brave but inevitably futile cry for *the eXile*'s mostly apolitical readers to join a petition drive to prosecute members of the Clinton administration for violating the payola laws.

The argument animating the pair's shared outrage over American anti-drug propaganda may be somewhat difficult for those who never experienced the decadence of 1990s Moscow to follow, but it goes roughly like this: Communist Russia may have lost the ideological battle, but her resilient losers, far from becoming productive clones of workaholic, pleasure-deferring Americans, have instead tumbled into self-destructive orgies of sensual satisfaction. From its macabre mafia violence to its innumerable dens of debauch, Moscow is not for the faint of heart. Once-unobtainable drugs such as cocaine have been taken up with the same exuberance Russians have always displayed while downing vodka. Previously unknown holidays with party-going potential, such as Halloween and Valentine's Day, have been

Your Tool for Liberty on the Web
www.cato.org
Plug into the world's best on-line resource for advancing the ideas of limited government, individual liberty, free markets, and civil society.
The *Daily Dispatch, Today's Commentary,* and a searchable compendium of 23 years of cutting-edge policy research are just some of the reasons more than 14,000 sponsors make annual tax-deductible gifts to "Washington's hottest think-tank,*" the Cato Institute.
CATO INSTITUTE
* *Rolling Stone*
Cato Institute, 1000 Massachusetts Ave., N.W., Washington, D.C. 20001

embraced one after another with almost ludicrous abandon. Ames and Taibbi defend their beloved hedonistic turf against those imperious avatars of cultural correctness, from the World Bank to President Putin, who are trying to tame it.

Though Ames and Taibbi are often explicitly anti-American, there is something uncannily American about their mixture of brutal intellectual kickboxing and shameless self-promotion. Instinctively they must realize that only the America they love to hate has ever really enjoyed the unabashed freedom of expression they continually abuse with malicious glee. That they venture so far beyond the pale of public decency should be seen as a sign of their desperation over what they consider America's increasingly rigid orthodoxies.

The eXile's editors have found a First Amendment haven in the former capital city of International Communism, of all places.

Ames and Taibbi often remark that their paper would be shut down in a minute if it were published in New York or Washington, if not for unlawful slander then by armies of enraged feminists, anti-obscenity activists, and sexual harassment lawyers. In light of the heat generated by *the eXile* just among the expatriate community of Americans in Moscow—where the editors have repeatedly endured blackmail, petition drives to boycott the paper's advertisers, and even death threats—such a scenario is not hard to imagine.

In Moscow, by contrast, Ames and Taibbi are free to go on smearing rhetorical mud pies over the Clintonian New World Order. Fleeing the unwritten speech codes of their native America, Ames and Taibbi have found a First Amendment haven in the former capital city of International Communism, of all places. Small wonder, then, that their rhetoric is so extreme. Only by shouting fire in a crowded theater, *the eXile* would have us believe, is it possible to wake up the numbed, complacent citizens of our once-vaunted democracy.

Whether or not Ames and Taibbi are justified in this bleak assessment of American civic life, their explosive new book is sure to stampede its way into the argument one way or another. And for politically incorrect Americans longing for an antidote to the bland, unquestioning triumphalism of our current national consensus, I have a feeling *the eXile* will go down like an ice-cold glass of lemonade—laced with vodka and a melange of potent narcotics—on an unbearably humid summer day.

Sean McMeekin (seanchik@yahoo.com) is a Ph.D. candidate in history at the University of California at Berkeley.

The Officers and Directors of
THE INDEPENDENT INSTITUTE
proudly announce the

2001 Olive W. Garvey Fellowships

The Garvey Fellowships will be awarded for the three best essays on the topic:

"Does the new economy require a free economy?"

Essays of not more than 3,000 words may be submitted by college students 35 years of age or younger. The essays will be judged by a panel of distinguished scholars.

Deadline for Submission: May 1, 2001
Announcement of Winners: September 1, 2001

First Prize: *$2,500*
Second Prize: *$1,500*
Third Prize: *$1,000*

For complete entry details, please contact:
The Independent Institute
100 Swan Way, Dept. GU, Oakland, CA 94621-1428
Phone: 510-632-1366 • Fax: 510-568-6040
E-mail: Garvey@independent.org
Website: http://www.independent.org

Look for *The Independent Review* on better newsstands and in bookstores!

Downmarket Deluxe

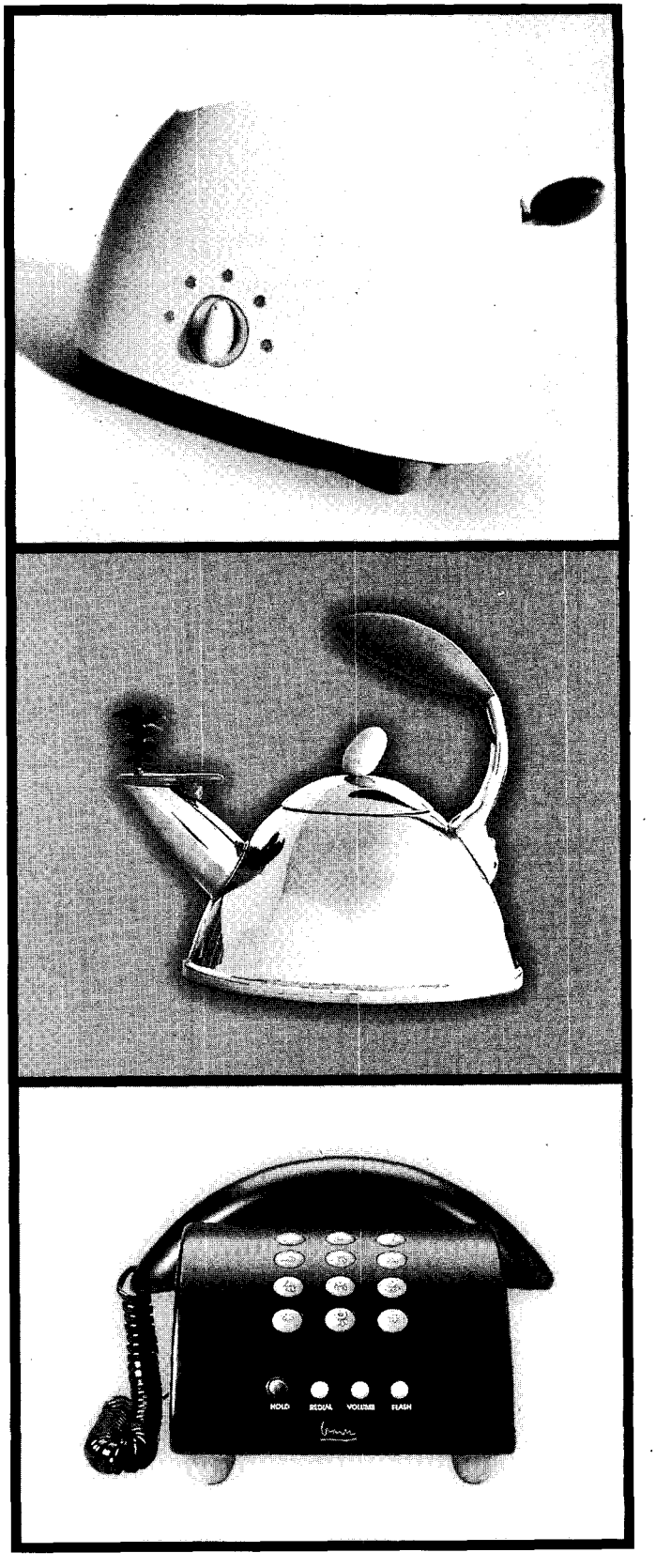
Target, the downmarket discount chain, has lately added a few dozen more housewares to its "Michael Graves Design Collection." More than 500 are now available; three new items (a toaster, a tea kettle, and a phone) are pictured here. These are witty designs that deal playfully with familiar shapes, and it is not surprising that they have proven a great success for Target. Yet when the Graves line started last year, *The New York Times* turned sour. Target's shoppers, the paper sniffed, would likely confuse Graves with a corporate prop such as Betty Crocker.

Graves, as it happens, is an architect, and the elite cultural press was once a very big fan of his. His buildings have often been cited as exemplifying postmodern design at its best. Signature works such as the Denver Public Library and his Florida hotels and apartments featured unusual juxtapositions of mass, and surprising, bright colors. In other words, the same playful sensibility at work in his famous buildings, embraced by elite critics, is at work in his Target housewares, which has left the same critics sneering.

When Graves designed objects for Tiffany, nobody sneered. But then Tiffany is part of the same taste culture that New York critics inhabit; Target isn't. Or so they still think. But though such critics remain stationed as gatekeepers, their concerns about taste proprieties are increasingly beside the point. Cultural castes are being obliterated by the increasing ubiquity of cultural choice—whether in literature or in housewares.

The *Times* may not realize that, but Michael Graves does. So does Target, as do its shoppers.

—Charles Paul Freund



PHOTOS: COURTESY TARGET

The Cost of Discrimination

Andrew Hanssen is a national fellow at the Hoover Institution and an assistant professor, Department of Agricultural Economics and Economics, at Montana State University.

The story of Jackie Robinson and his auspicious pairing with Brooklyn Dodgers' president Branch Rickey to break major league baseball's color barrier in 1947 is well known. Less well known is the role competitive market forces played in that story. The driving impetus behind baseball's integration was the desire to win games. Because the Dodgers wanted to win, they signed Jackie Robinson. And because other baseball owners also wanted to win, they could not continue to ignore African Americans once Jackie Robinson took the field. **The cost of remaining segregated when others integrated was too high.**

Three years earlier, the Dodgers had finished seventh in an eight-team league and Branch Rickey was under fire. Needing to win, he recognized the potential of the shunned African American ballplayers. "The greatest untapped reservoir of raw material in the history of the game is the black race!" he said. "The Negroes will make us winners for years to come, for which I will happily bear being called a bleeding heart and a do-gooder and all that humanitarian rot." Integrating unexpectedly, Rickey was careful not to announce the signing of Jackie Robinson until he had locked up several other top African American prospects, including future Hall of Famer Roy Campanella and future Cy Young Award winner Don Newcombe.

While the Dodgers were winning six National League pennants between 1947 and 1956, pressure was growing on other teams to integrate. The source of that pressure was not moral but financial. According to my statistical analysis, each African American player in the starting lineup was worth six additional wins to his team in 1950. That is a *big* number—the average gap between first and second place during the last fifty years has been about six games. Inevitably, the National League integrated.

The situation was slightly different in the American League, but the eventual result was the same. The dominant AL team until the mid-1960s was the New York Yankees, who paid the price for not signing African American players during the 1950s. Although the strength of their roster enabled them to continue winning for a while, their fifty years of dominance came to an end. In 1965, the Yanks lost more games than they won for the first time since 1919. Eleven years would pass before the next Yankee pennant; in that 1976 pennant win, six of the nine starters were African American.

The moral is that discriminating in a competitive setting is costly. Just as baseball teams that refuse to sign the best players lose more often, firms that refuse to hire the best available candidates regardless of race, gender, and so forth have higher costs, produce lower-quality products, or are slower to innovate than their nondiscriminating rivals. As Nobel Prize–winning economist Gary Becker points out, **society's best safeguard against persistent discrimination is competition.** Racist and sexist firms either mend their ways or go bankrupt. We can see the fruits of this lesson on the ball field, where today African American ballplayers make up 30 percent of all major leaguers.

— F. Andrew Hanssen

Paid for by the Hoover Institution, Stanford University.

Interested in more commentary on public policy?

Visit us on-line at www.hoover.org or contact us to receive a complimentary copy of the 200-page, award-winning Hoover Digest.

Hoover Institution...*ideas defining a free society*

STANFORD UNIVERSITY, Stanford California 94305-6010
Toll-free: 877.466.8374 Fax: 650.723.1687
info@hoover.stanford.edu www.hoover.org

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

How to make intelligent, safe and cost-conscious decisions every time you buy insurance. At Quotesmith.com you get instant quotes from over 300 companies – and the freedom to buy from the company of your choice. It's fast and easy.

Instant Car Insurance Quotes

Could you save 20% or more on car insurance? We've made it quick and easy to get instant car insurance quotes from leading insurers, all in one place.
Quotesmith.com is an ideal car insurance resource for drivers of every age.
At Quotesmith.com, we've even made it possible for you to point, click and buy online!

All in one place: instant quotes from leading companies make it easy to comparison shop.

All Quotes Guaranteed Accurate (or you get $500)

Popular with families: 10, 20 and 30 year term life insurance can give peace of mind.

Instant Term Life Insurance Quotes

Pick a rate guarantee and go! In seconds, you'll view policies, coverages, independent ratings, underwriting guidelines and premiums – all conveniently sorted by lowest cost.

Quotesmith.com makes it easy to compare health plans, features and prices.

Quotesmith.com Online!

File Edit InstantQuote Help

Quotesmith.com Incorporated

Wow! Instant quotes from over 300 leading insurance companies right here and now

Fast Accurate Easy Unbiased Private

"We found the best deals at Quotesmith."
Money Magazine

"SmartMoney Interactive has rated Quotesmith the #1 site for online insurance quotes."
SmartMoney Online

"...make shopping for the cheapest insurance policy much easier."
Parents Magazine

"...the largest number of insurers..."
Jane Bryant Quinn

Instant Car Insurance Quotes

Instant Term Life Quotes
View America's lowest premiums - or you get $500!

Quick-Issue Life Insurance Quotes
- No medical exams, speedy issue

Instant Medicare Supplement Quotes
Quick quotes for ages 65 & up

Instant Medical Insurance Quotes
- For individuals & families
- One employee or one family
- Groups of 2-100 employees

Instant Workers' Compensation Quotes
For Small Businesses

Instant Dental Insurance Quotes
Small Business/Families/Individuals

Instant Boat, Watercraft, RV & Motorcycle Insurance Quotes

BBB Reliability Program BBBOnLine

More instant insurance quotes than any place else on earth! Get instant quotes, view the latest ratings, examine vital policy coverages, view underwriting guidelines, buy from the company of your choice. Take control of your insurance decisions. Have questions? Want help? Call us toll-free at 1-800-556-9393, 7 a.m. to 10 p.m. Central time. California and Utah DBA Quotesmith.com Insurance Services. CA #0827712, #OA13858, UT #90093. Some companies are shown for purely informational purposes only. $500 guarantee is subject to the terms and conditions detailed at www.quotesmith.com.

Instant Medical Insurance Quotes

Here is the quickest way possible to find health insurance coverage for yourself, your family or your small business.
Get instant quotes, scan the marketplace in seconds. You'll find standard plans, PPOs, HMOs, short term plans, dental plans and Medicare supplement plans all in one place at Quotesmith.com.
Participation by leading companies eliminates the hassle of buying medical insurance.

www.quotesmith.com

AD CODE REAS 01/01